UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. INOLA MACHINE AND FABRICATING CO., Inc., a/k/a INOLA MACHINE AND FRABRICATING Co., Inc., an Oklahoma corporation; PRISCILLA MEDLOCK, a/k/a SILVIA PRISCILLA MEDLOCK; STATE OF OKLAHOMA ex rel TAX COMMISSION, Defendants.	)	FILED JUN 30 1983 Jack C. Silver, Clerk U. S. DISTRICT COURT Civil Action No. 81-C-129-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 29th day of June, 1983. The Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; the Defendant, Priscilla Medlock, a/k/a Silvia Priscilla Medlock, appearing by her attorney, James W. Summerlin; the Defendant, State of Oklahoma ex rel Tax Commission appearing by Majorie Patmon, General Counsel, Oklahoma Tax Commission; and the Defendant, Inola Machine and Fabricating Co., Inc., a/k/a Inola Machine and Frabricating Co., Inc., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Inola Machine and Fabricating

Co., Inc., a/k/a Inola Machine and Frabricating Co., Inc., was served with Summons and Complaint by serving the same on the Oklahoma Secretary of State on April 2, 1981; and that the Defendant, State of Oklahoma ex rel Tax Commission was served with Summons and Complaint on April 2, 1981.

It appears that the Defendant, Priscilla Medlock, a/k/a Silvia Priscilla Medlock, filed her Answer herein on June 1, 1981; that the Defendant, State of Oklahoma ex rel Tax Commission, filed its Disclaimer herein on April 7, 1981; and that Defendant, Inola Machine and Fabricating Co., Inc., a/k/a Inola Machine and Frabricating Co., Inc., has failed to answer the Complaint and its default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a Promissory Note and for foreclosure of a Real Estate Mortgage securing said Promissory Note upon the following-described real property located in Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot 3, Block 3, Martin's Ranch Acres, a subdivision of part of SW/4 of Section 5, Township 19 North, Range 17 East of the IB&M according to the recorded plat thereof.

THAT the Defendant, Inola Machine and Fabricating Co., Inc., a/k/a Inola Machine and Frabricating Co., Inc., did, on the 15th day of March, 1976, execute and deliver to the Arkansas Valley State Bank, Broken Arrow, Oklahoma, its Real Estate Mortgage and Promissory Note in the sum of $100,000.00, payable

in monthly installments, with interest thereon at the rate of ten and one-quarter (10 1/4) percent per annum.

The Court further finds that the Arkansas Valley State Bank, Broken Arrow, Oklahoma, did, on the 15th day of September, 1977, assign, transfer, and set over to the Plaintiff, United States of America acting through the Small Business Administration, the aforementioned Real Estate Mortgage and Promissory Note.

The Court further finds that the Defendant, Inola Machine and Fabricating Co., Inc., a/k/a Inola Machine and Frabricating Co., Inc., made default under the terms of the aforesaid Promissory Note by reason of its failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the above-named Defendant is indebted to the Plaintiff in the sum of $14,700.00 as of June 15, 1983, plus interest thereafter accruing at the rate of ten and one-quarter (10 1/4) percent per annum until paid, plus the costs of this action accrued and accruing.

The Defendant, Priscilla Medlock, a/k/a Silvia Priscilla Medlock, has an interest in the above-described real property by virtue of a general warranty deed. Said interest is junior and inferior to the mortgage lien of the Plaintiff, as was determined by the Court in its Order entered June 16, 1982.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendant, Inola Machine and Fabricating Co., Inc., a/k/a Inola Machine and

Frabricating Co., Inc., in the sum of $14,700.00 as of June 15, 1983, plus interest thereafter accruing at the rate of ten and one-quarter (10 1/4) percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the previously named Defendant to satisfy the money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property herein, and apply the proceeds thereof as follows:

FIRST:

In payment of the costs of this action, accrued and accruing, including the costs of sale;

SECOND:

In payment of the judgment rendered herein in favor of Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, the Defendants and all persons claiming under them since the filing of the Complaint herein be and they are forever barred and foreclosed of any

right, title, interest, or claim in or to the subject real property or any part thereof.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING
United States Attorney

NANCY A. NESBITT
Assistant United States Attorney

JAMES W. SUMMERLIN
Attorney for the Defendant
Priscilla Medlock, a/k/a Silvia Priscilla Medlock

BENJAMIN C. FAULKNER
Attorney for Third Party Defendants
Leo Faught and J. C. Heginbotham

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FORD MOTOR CREDIT COMPANY, Plaintiff,	)	
vs.	)	No. 82-C-782-C
COWBOY'S OILFIELD SPECIALTIES, INC., a corporation, Defendant.	)	

CONSENT DECREE ENTERED UPON STIPULATION

The plaintiff, having filed its complaint demanding relief and praying for damages it has set forth more fully by its complaint and prayer for relief therein, and the plaintiff and defendant having agreed upon a basis for the adjudgment of the matters alleged in the complaint and the entry of adjudgment in this action, and having entered into a stipulation, the original of which is being filed with the Court, and due deliberation being had thereon, now, on motion of counsel for the plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED, that final judgment in favor of the plaintiff and against the defendant is hereby granted and ordered entered as the judgment in this action as follows:

That plaintiff shall have judgment against the defendant in the amount of Fifty Thousand and No/100 Dollars ($50,000.00) for the conversion of two Gardner FXD mud pumps plus interest

at the rate of 9.59 percent per annum, costs of this action and a reasonable attorney's fee in the amount of Five Thousand and No/100 Dollars ($5,000.00).

Dated this 29th day of June, 1983.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

FORD MOTOR CREDIT COMPANY

Thomas G. Marsh
Jeffrey S. Wolfe
DYER, POWERS, MARSH & ARMSTRONG
525 South Main, Suite 210
Tulsa, Oklahoma 74103
(918) 587-0141

COWBOY'S OILFIELD SPECIALTIES, INC.

McPherson, Bauer & Pike, Chtd.
2109 Twelfth Street
Great Bend, Kansas 67530
(316) 793-3420

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 29 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

AMERICAN COLLOID CARRIER CORPORATION, a Nebraska corporation,

Plaintiff,

-vs-

B & H MOTOR FREIGHT, INC., an Oklahoma corporation,

Defendant.

No. 82-C-1114

JOURNAL ENTRY OF JUDGMENT

This cause is submitted to the Court on this 29 day of June, 1983, by stipulation of each of the parties through their respective attorneys; and there having been filed by the Defendant its Affidavit admitting the amounts claimed in the Complaint of the Plaintiffs as justly due and owing by said Defendant, B & H Motor Freight, Inc., having filed his Warrant of Authority, which has been filed with the Clerk of the Court. By stipulation of the parties, the said Defendant, B & H Motor Freight, Inc., by its attorney, Fred Rahal, Jr., has confessed judgment of the amount prayed in Plaintiff's Complaint less credit to the Defendant for proper credits and set-offs upon the Causes of Action therein stated, to-wit:

1. That pursuant to the request of the Defendant, B & H Motor Freight, Inc., its agent and employees, the Plaintiff, American Colloid Carrier Corporation, delivered certain goods and merchandise for the Defendant to various locations and consignees; the freight charges for which were kept on open account with the Plaintiff, American Colloid Carrier Corporation, which charges were incurred during the period December, 1981, through August, 1982. All said freight charges were

incurred for the delivery of goods and merchandise which were shipped to various states and consignees, all at the special insistence and request of the Defendant, B & H Motor Freight, Inc., its agent and employees.

2. That the Defendant, B & H Motor Freight, inc., was justly indebted to the Plaintiff, American Colloid Carrier Corporation, in the approximate amount of Ninety-eight Thousand Five Hundred Seventy-eight Dollars and Eleven Cents ($98,578.11), as of August 16, 1982, for the freight charges incurred by Defendant from Plaintiff, American Colloid Carrier Corporation.

3. That Plaintiff, American Colloid Carrier Corporation, did receive payments from the Defendant B & H Motor Freight between the period of December 21, 1981 and August 16, 1982, in the amount of Thirty-five Thousand Three Hundred Forty-four Dollars and Eighty-seven Cents ($35,344.87) thereby reducing the principal indebtedness to the amount of Sixty-three Thousand Two Hundred Thirty-three Dollars and Twenty-four Cents ($63,233.24).

4. That in addition to the credits applied in Paragraph 6 above, the additional amount of Thirteen Thousand Two Hundred Thirty-three Dollars and Twenty-four Cents ($13,233.24) should be applied to the principal indebtedness as and for set-offs owed by the Plaintiff to the Defendant leaving a balance due Plaintiff of Fifty Thousand Dollars ($50,000.00).

THE COURT FINDS that the Court has jurisdiction over the parties and the subject matter hereof by virtue of Title 28 U.S.C. §1332, based upon the diversity of citizenship of the parties. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest, costs and attorney's fees.

THE COURT FURTHER FINDS that under the laws of the State of Oklahoma, the Plaintiff is entitled to interest on its judgment at the rate of ten percent (10%) per annum from the date of Judgment and are entitled to a reasonable attorneys' fee, which the parties have mutually agreed to be Two Thousand Five Hundred Dollars ($2,500.).

The Court being fully advised FURTHER FINDS that said attorney is duly authorized, that the Warrant of Attorney and Affidavit of Defendant filed herein are in all respects regular and sufficient, and that judgment should be entered for the Plaintiffs upon such confession.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff, American Colloid Carrier Corporation, have and recover from the Defendant the sum of Fifty Thousand Dollars ($50,000.), plus interest thereon at the rate of ten percent (10%) per annum from the date of judgment until such sum is fully paid; and attorneys' fees in the amount of Two Thousand Five Hundred Dollars ($2,500.); for all of which let execution issue.

s/H. DALE COOK

H. DALE COOK
United States District Judge for
the Northern District of Oklahoma

The parties, by and through their respective counsel, hereby stipulate to the entry of the above Journal Entry of Judgment, and approve such Journal Entry as to form:

HOWARD, LA SORSA & WIDDOWS

By: William G. LaSorsa

William G. LaSorsa
21 Centre Park, Suite 275
2642 East 21st Street
Tulsa, Oklahoma 74114
(918) 744-7440
Attorneys for Defendant

RAHAL & ANDERSON

By: Fred Rahal, Jr.

Fred Rahal, Jr.
Suite 305, Renuion Center
9 East Fourth Street
Tulsa, Oklahoma 74103
(918) 583-9000
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

RAYMOND HOYT GRACE and BARBARA GRACE,	§	
Plaintiffs,	§	
Versus	§	NO. 82-C-672-E
FIBREBOARD CORPORATION, a Delaware corporation, et al.	§	
Defendants.	§	

MOTION TO DISMISS

Plaintiffs, Raymond Hoyt Grace and Barbara Grace, respectfully show the Court that plaintiffs and defendant, Owens-Illinois, Inc., have agreed to and reached a settlement herein and therefore move the Court to dismiss this action with prejudice as to defendant, Owens-Illinois, Inc., only.

DATED this 23 day of JUNE, 1983

FREDERICK M. BARON & ASSOCIATES

BY: Brent Rosenthal
BRENT M. ROSENTHAL
ATTORNEYS FOR PLAINTIFFS

FILED
JUN 30 1983
U. S. DISTRICT COURT

ORDER OF DISMISSAL

On this 30 day of June, 1983, the above styled and numbered cause comes on for hearing before the undersigned Judge of the United States District Court in and for the Northern District of Oklahoma upon plaintiffs' Motion to Dismiss the defendant, Owens-Illinois, Inc., and the Court having examined

the pleadings and being fully advised in the premises,

IT IS ORDERED that the above entitled cause be and same is hereby dismissed with prejudice to any future action against defendant, Owens-Illinois, Inc., only.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

FREDERICK M. BARON & ASSOCIATES

By: Brent M. Rosenthal

Brent M. Rosenthal
8333 Douglas Avenue, Suite 1400
Dallas, Texas 75225

ATTORNEYS FOR PLAINTIFFS

Jack R. Durland, Jr.

JACK R. DURLAND, JR.

CROWE & DUNLEVY
1800 Mid-America Tower
20 North Broadway
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR DEFENDANT, OWENS-ILLINOIS, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND HOYT GRACE and BARBARA GRACE	)	
Plaintiff,	)	
vs.	)	No. 82-C-672-E
FIBREBOARD CORPORATION, ET AL.	)	
Defendants.	)	

APPLICATION FOR DISMISSAL

Comes now the plaintiffs, Raymond Hoyt Grace and Barbara Grace, and their attorney of record, Brent M. Rosenthal, and moves this Court to enter an Order dismissing the above entitled action only as against Armstrong World Industries, Inc., upon the merits and with prejudice as to a future action, and would show the Court that the same has been fully compromised and settled and should be dismissed as to the defendant, Armstrong World Industries, Inc., only.

Brent Rosenthal
Attorney for plaintiffs

ORDER OF DISMISSAL

The above cause comes on for hearing upon the Application of the plaintiffs, Raymond Hoyt Grace and Barbara Grace and their

attorney of record for a dismissal of the above and foregoing action only as to the defendant, Armstrong World Industries, Inc., and the Court, being well advised in the premises, FINDS that the Order Of Dismissal should issue.

IT IS THEREFORE ORDERED that the above entitled cause, and each claim thereof, be and the same is hereby dismissed upon the merits and with prejudice to a future action as to the defendant, Armstrong World Industries, Inc., only, each party to bear its own costs.

DATED this 14 day of July, 1983.

s/H. DALE COOK
for James E. Ellison
United States District Judge
Northern District of Oklahoma

APPROVED:

Brent M. Rosenthal,
Attorney for plaintiffs

Robert S. Baker,
Attorney for defendant,
Armstrong World Industries, Inc.

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARRY LEON CHANEY, 95872,

Petitioner,

vs.

No. 83-C-519-BT

JOHN N. BROWN, Warden,
Oklahoma State Penitentiary,
McAlester, Oklahoma,

Respondent.

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

Before the Court for consideration is the petition for writ of habeas corpus of Larry Leon Chaney. Petitioner Chaney and the State of Oklahoma on behalf of John N. Brown, Warden of the Oklahoma State Penitentiary, have filed simultaneous briefs with regard to the issues contained in the habeas petition. For the reasons hereinafter discussed, the petition is denied.

1. The petitioner was convicted by jury verdict and sentenced to death on September 22, 1977.

2. The petitioner perfected a direct appeal to the Court of Criminal Appeals of the State of Oklahoma, cited as Chaney v. State, 612 P.2d 269 (Okl.Cr. 1980), wherein the Court of Criminal Appeals affirmed the petitioner's conviction and sentence of death.

3. Thereafter, petitioner sought review in the Supreme Court of the United States, by way of writ of certiorari, which was denied by that court, Chaney v. Oklahoma, 450 U.S. 1025, 101 S.Ct. 1731, 68 L.Ed.2d 219 (1981).

4. On April 3, 1981, petitioner filed his first Application for Post-Conviction Relief under 22 O.S.1981, §1080 et seq. Thereafter, and subsequent to hearings in the matter, the District Court of Tulsa County entered an Order Denying Application for Post-

Conviction Relief.

5. The petitioner then appealed that order to the Court of Criminal Appeals of the State of Oklahoma, which resulted in the entry of an Order Affirming Denial of Post-Conviction Relief on November 12, 1981, in Case No. PC-81-345.

6. From the Court of Criminal Appeals' denial of post-conviction relief, the petitioner again petitioned the United States Supreme Court for review by way of certiorari, which the Supreme Court denied on April 5, 1982.

7. Thereafter, the petitioner filed petition for writ of habeas corpus before the United States District Court for the Northern District of Oklahoma, No. 82-C-625-B. Therein, the Court dismissed petitioner's Petition for Writ of Habeas Corpus on June 25, 1982, under the authority of Rose v. Lundy, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982).

8. The petitioner then filed another Application for Post-Conviction Relief which was again denied by the trial court on August 9, 1982.

9. The petitioner appealed that order; and the Oklahoma Court of Criminal Appeals affirmed the denial of such on February 3, 1983, in Case No. PC-82-487.

10. The petitioner then filed a third Petition for Writ of Certiorari with the United States Supreme Court, which was denied on June 6, 1983. The Supreme Court also denied the petitioner's Application for a Stay of Execution on that date.

11. Having exhausted all of his state appellate remedies, petitioner on June 15, 1983 filed in this Court his petition for writ of habeas corpus, application for stay of execution and application for evidentiary hearing.

12. On June 17, 1983 this Court granted petitioner's application for stay of execution to and including July 25, 1983.

13. On June 23, 1983 this Court denied petitioner's application for evidentiary hearing.

STATEMENT OF THE CASE

Petitioner was charged with Murder in the First Degree in violation of 21 Okl.St.Ann. §701.7. At trial in the District Court of Tulsa County, State of Oklahoma, the state presented the following evidence:

For about a month before the kidnapping and death of Kendal Ashmore, a man who identified himself as Richard Elliot had been calling the Ashmore residence in Jenks, Oklahoma, about Morgan horses. The calls always occurred while Mr. Ashmore was away from the home. (TR 877) On Saturday, March 12, 1977, the man called and made an appointment to come to the Ashmore home at 11 a.m., the next day, Sunday, March 13. (TR 875) The Ashmores were home the entire day on Sunday, but the man never appeared. (TR 876) Subsequently, the man called Kendal Ashmore, told her he had trouble finding her home, and made another apppointment. (TR 876)

On the morning of March 15, 1977, Larry Chaney traded vehicles with a business associate, Jim Holman, at the Dow Building in Tulsa, Oklahoma, Chaney giving Holman his Lincoln Mark VI and taking Holman's four-wheel drive GMC "Jimmy". (TR 638-40) Holman owned stock in Chaney's construction company, Eagle Builders, Inc. (TR 644) Holman planned to drive to Kansas City that day and had originally intended to trade his wife the Jimmy for the couple's Cadillac. Chaney, however, suggested Holman swap with him since Chaney planned to drive to Sallisaw, Oklahoma, to work on a cabin under construction, and there was a lot of mud in

the area. (TR 645-46) Eagle Builders, Inc., owned the cabin, and Holman was financing the land on which it was located, approximately 10 miles north of Sallisaw. (TR 644)

Also on March 15, Chaney drove to Ingersoll-Rand at 6106 E. 32nd Place, where his cousin, Alfred Jones, worked. (TR 592-93) There, Chaney exchanged the "Jimmy" for a 1967 green Dodge pickup jointly owned by Chaney and Alfred Jones. (TR 593-94, 599) Chaney left the "Jimmy" in the parking lot behind the Ingersoll-Rand building. (TR 600)

At 7:00 a.m., on March 16, 1977, Chaney drove the green pickup, met his cousin Gary Jones (brother of Alfred Jones) at a cafe in Broken Arrow, Oklahoma. (TR 612-14) The two drove to Sallisaw in separate vehicles and arrived at the property on which the cabin is located at about 10:00 a.m. (TR 613-14) The cabin was set back about 100 feet off State Highway 59 on a hill in a pasture. (TR 615-16) Running parallel to Highway 59 is a dirt road, and intersecting that road is another road leading to an area called the "valley". (TR 617) Jones, using a pick from the green truck, dug around telephone poles on which the house was built so concrete could be poured. (TR 618-19) He left the property by himself at 3:30 p.m. and arrived in Tulsa at about 5:20 p.m., or 5:30 p.m. that evening. (TR 620) Chaney checked into a double room at the Stardust Motel in Sallisaw at 9:30 p.m. or 10:00 p.m., that night. (TR 653)

Larry Chaney checked out of the Stardust Motel in Sallisaw March 17 between 6:30 a.m. and 7:30 a.m. (TR 653) The room was

listed in the name of Eagle Builders, Inc. Chaney paid the room charge using a Master Charge card. The motel bill reflects he was driving a 1967 Dodge pickup truck. (TR 652) At about 9:30 a.m. one of the co-owners of the motel went to the room Chaney had occupied to pull the sheets. Three terry cloth bathtowels were missing. (TR 659)

Philip Ashmore, Kendal Ashmore's husband, left the family residence at 9148 South 33rd West Avenue and arrived at work the morning of March 17, 1977 at about 6:15 a.m. (TR 343) Mr. Ashmore was in the construction business; he and his wife also raised Morgan horses at their residence, which was on a farm. (TR 337-38) Kendal Ashmore called her husband on the truck phone around 7:00 a.m. or 8:00 a.m. that morning and told him she needed the truck that day to pick up some hay. (TR 339, 344-45) She came to the office at approximately 9:30 a.m., picked up the truck, and left the Oldsmobile station wagon. Kathy Brown, a young woman employed by the Ashmores as a horse trainer, was with Kendal Ashmore. (TR 338, 345)

At 9:50 a.m. on March 17, Larry Chaney drove up to the drive-in window of the National Bank of Sallisaw, deposited $500 of a $600 check, and kept $100 cash. He was driving an older model green pickup truck. (TR 664).

A note found in the Ashmore pickup after the kidnapping indicated Kendal Ashmore had an appointment to meet a man who identified himself as Richard Elliot at 1 p.m. at the intersection of 91st Street and Memorial Drive in Tulsa, Oklahoma.

(State's Exhibit 12) At 3:00 p.m. or 3:15 p.m. that afternoon, Philip Ashmore received a call from his daughter, Lori Ann, because she could not find her mother. Mr. Ashmore tried to call his wife on the truck telephone but was unable to reach her. Lori Ann called him back about one-half hour later, and Mr. Ashmore went home. (TR 347-48) He noticed the hay his wife and Kathy Brown had gone after was at the farm. (TR 349)

When Alfred Jones went to work on the morning of March 17, the four-wheel drive "Jimmy" Chaney had left in the parking lot behind Ingersoll-Rand was still there. (TR 694) When he returned to the parking lot at 5:00 p.m. or 5:30 p.m. that evenng, the "Jimmy" was gone and the green pickup truck had been returned. (TR 605)

Ellis Hummingbird and his brother, Stanley, saw Larry Chaney driving up from the valley on the land near Sallisaw at about 4:30 p.m. the afternoon of March 17. Chaney was driving a four-wheel drive, two-toned vehicle. (TR 671-73) Ellis stopped and spoke to Chaney. (TR 675)

Between 3:00 p.m. and 5:00 p.m. on March 17, Chaney stopped at the Inez Convenience Store at the Junction of Highway 59 and Highway 191, three miles north of Sallisaw. The owner of the store, Clarence Cariker, testified Chaney was driving a four-wheel drive, beige and white GMC. (TR 693-94) Chaney was covered with dirt from the knees down. (TR 694) Telephone records indicate Chaney made a call from the convenience store at 4:39 p.m., charging the call to his telephone in Jenks, Oklahoma to

Jim Holman. (TR 793) Chaney told Holman he had done all the work he could do on the cabin in Sallisaw, said it had started to rain, and told Holman he was coming back to Tulsa. (TR 643)

The evening of March 17 Phil Ashmore received the first of three extortion telephone calls. The caller stated he had "got your old lady and that honky that works for you and I want a half million dollars in one hundred dollar bills." (TR 351) The caller said he would phone the next night with instructions regarding the delivery of the money, and stated that if anyone heard about the call, "I'll do to your wife what I did to that honky that works for you." (TR 351-52) The call lasted two or three minutes. (TR 352) Ashmore immediately called his attorney, who in turn contacted the Federal Bureau of Investigation (FBI). (TR 352) A recording device was then attached to the Ashmores' telephone. (TR 354) Mr. Ashmore collected the $500,000 and put it in security at the First National Bank of Tulsa. (TR 357)

At 9 a.m. on March 18, an FBI agent discovered the Ashmore truck at 91st Street and Memorial in Tulsa, Oklahoma. The agent unlocked the truck with a wire. Among papers found in the truck was a note written on half a piece of paper in Kendal Ashmore's handwriting with the words, "1:00 Thur.", "91st & Memorial", "Richard Eliot", and the numbers, "581-3106" and "352". (TR 468-71, State's Exhibit #12). The other half of the paper was found in the Ashmore's home. (TR 588-89, State's Exhibit #11). Also found in the pickup was an Arby's roast beef sandwich wrapper and packages of Arby's roast beef sauce. (TR 454-55,

478). Based upon surface conditions, the FBI concluded the truck had been driven into the area either before or during a thunderstorm that occurred around 5 p.m. or 6 p.m. on March 17. (TR 489, 493-94)

At 6:53 p.m on March 18, Philip Ashmore received the second ransom call. (TR 418-19) The voice of the caller was the same as the voice Ashmore heard during the first call. (TR 364) The second ransom call was recorded and consisted of the following exchange: (TR 361-63)

CALLER'S VOICE: "Are you ready to do business, brother?"

ASHMORE: "Yes, sir. I'm ready."

CALLER'S VOICE: "All right, I'm going to tell you but one time. Now, I want you to listen and listen good. You come to the old rodeo arena up towards Jenks, Oklahoma."

ASHMORE: "Yeah."

CALLER'S VOICE: "You turn in there and you come around the arena to your right. You bear to the right and you go back to the fence."

ASHMORE: "Wait a minute. Wait a minute. Go to the right--"

CALLER'S VOICE: "Go around the arena to the right and go back to the fence, and you'll see a road they've been using."

ASHMORE: "Yeah."

CALLER'S VOICE: "You put the money in the corner over the fence, and you get back in your truck and you drive towards home. My man's going to pull in there and pick it up, and if anything comes down I'm going to know

about it and your old lady's going to know about it. And I'm going to tell you what, one hour after we pick up that money we're going to check everything and make sure it's all right, brother, and I'm going to call you and tell you where to pick up your wife, and it better be straight too."

ASHMORE: "Wait a minute. Let's--let's--let's get our stuff together. You want me to come to that rodeo ground and go right--"

CALLER'S VOICE: "Go around the area to the fence and drop it over the fence at the corner of the fence there were the two fences met, and turn around and head for home. One hour after we pick that money up-"

ASHMORE: Okay. Now, wait a minute. Let's--"

CALLER'S VOICE: "Now, we ain't stalling no more, man."

ASHMORE: "I'm not stalling. I want to talk to my wife."

CALLER'S VOICE: "Well, you'll talk to your wife--"

ASHMORE: "No. No. Let's get 'er straight. I'm a businessman."

CALLER'S VOICE: All right, you're a businessman. Your wife ain't with me now, buddy. It's my game. You're going to get your wife--"

ASHMORE: "You have her call me and I'm not going to give you money, and I don't even know you. You may have killed my wife, and I don't even know--"

CALLER'S VOICE: "Your wife ain't dead, pal, but I'm going to tell you this much. She's gonna be if you ain't there at 7:30. You leave your house and you drop that money, and then you can have your wife for breakfast. Your

truck is at 91st and Memorial, locked up. Seven-thirty you leave with that money."

ASHMORE: "Okay, but wait a minute. I've gotta go--"

(end of conversation)

The telephone call was traced and found to have been placed from Larry Chaney's trailer home telephone located at 215 East Apache, Space 7, in Jenks. (TR 418-419)[1]

After the extortionist hung up, Ashmore drove to downtown Tulsa at a high rate of speed, picked up the ransom money and drove to the Jenks rodeo grounds. (TR 365, 369) Ashmore deposited the money and returned home. (TR 369-70)

An agent of the Oklahoma State Bureau of Investigation arrived in the proximity of Larry Chaney's trailer at approximately 7:30 p.m. and stayed there some 45 minutes. (TR 794-96, 798) He observed a silver Corvette with a dealer's tag coming from the direction of the rodeo grounds. A white male was driving the car. (TR 799-800)

At 9:27 p.m., Ashmore received the third ransom call. (TR 373) It was traced to a pay telephone booth located at 61st Street and Yale Avenue, Tulsa, Oklahoma. (TR 424-25) The call was recorded and transcribed as follows:

ASHMORE: "Hello."

CALLER: "Thought it was a joke, huh, honky?"

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1 Everett Stevens, who lived in the trailer park where Chaney resided, testified he knocked on the door of Chaney's trailer on March 18, 1977, between 6:30 p.m. and 6:45 p.m. Nobody responded to the knock and none of Chaney's vehicles were parked outside the trailer. (TR 941-42).

ASHMORE: "I delivered the money."

CALLER: "You what?"

ASHMORE: "Your money's there."

CALLER: "Yeah, well, you didn't leave it where you were supposed to. You better go pick it up there. You've got one more chance, and I'm going to tell you what. We passed your truck and saw the pigs there, mother fucker. You're trying to pull some shit. You better go pick up that fucking money, and tomorrow you're going to get one more chance, and if you don't follow just exactly the way you're told, baby, that's it. That ain't no more. I'm going to send back a big hunk of your old lady in a box to you in the mail, mother fucker."

(end of conversation)

Phil Ashmore testified the caller's voice was the same as the voice in the other two calls. (TR 371) A palm print matching that of Larry Chaney's was taken from the receiver handle of the telephone in the booth at 61st and Yale approximately three hours after the call. (TR 452)

An OSBI agent staked out near Chaney's trailer, saw a silver Corvette pull into the trailer park, Lot No. 7, at 9:45 p.m., that evening. (TR 801) The OSBI agent left his location at about 12:00 a.m. and returned with other law enforcement officials at about 3:00 a.m. on March 19. (TR 802) The silver Corvette was still parked at Larry Chaney's trailer. (TR 803) Chaney was arrested at his trailer at 3:20 a.m., March 19, 1977. (TR 491)

Immediately after the arrest, police searched Chaney's home, looking for the victim or evidence of her whereabouts. A search

of the wastepaper basket in Chaney's home produced torn-up pieces of paper which, when reassembled, contained the words, "Richard Elloit" (sic), "1:00 p.m." and "Thursday", and the numbers "299-9791" and "9148." Those numbers matched the Ashmores' home telephone number and street address. (TR 397, 579) A handwriting expert testified the notations on the torn pieces of paper were made by Chaney. (TR 1199)[2] Latent fingerprints matching those of Chaney's were found on the note. (TR 588-89)

On March 22, 1977, at about 12:45 p.m., the body of Mrs. Kendal Ashmore was found buried in a shallow grave beneath a pile of brush in the valley on Chaney's property. (TR 719-11) The dirt underneath the brush had a crust indicative of rainfall. (TR 723) The records of the U.S. Weather Bureau reflect that Sallisaw received one-fourth inch of rain between 7 a.m. March 17 and 7 a.m. March 18. Sallisaw received no further rainfall through March 26. (TR 711-12). Mrs. Ashmore was buried in a hole 14 inches deep, two-and-one-half feet wide and six feet long. A towel covered her face and she was bound and gagged with pieces of white towel or terrycloth material. She had been strangled with a piece of white towel or terrycloth. (TR 727) Her purse and billfold were beneath the body, and the contents of the purse were damp. (TR 729) Her jeans still had creases in them and her eye makeup and lipstick were still visible. (TR 741) The body of Kathy Brown, Mrs. Ashmore's horse trainer, was

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2 Jessie G. Will, a handwriting expert called by defendant, testified the notations, "Richard Elloit", "1:00 p.m.", "Thursday", and the telephone number 299-9791 were not made by Larry Chaney. (TR 987).

found next to that of Mrs. Ashmore in the same shallow grave. (TR 1255)

A pick-ax found at Larry Chaney's residence in Jenks was found to have soil particles on it that matched the soil at the gravesite. (TR 893-94).

Dr. Neil A. Hoffman, Assistant Chief Medical Examiner for the State of Oklahoma, performed an autopsy on the body of Mrs. Kendal Ashmore on March 23 at 8:30 a.m. Dr. Hoffman testified that Mrs. Ashmore had been strangled and that she had been dead six days before the autopsy. (TR 832, 854-55, 871)[3] Another pathologist called as a rebuttal witness by the state reached the same conclusion. Dr. Hoffman also testified Mrs. Ashmore had eaten approximately two hours before her death, and that the stomach contents were similar to that of Arby's roast beef sandwiches. (TR 831, 853).

The petitioner Chaney chose not to take the witness stand.

Law enforcement officials investigating the murder reported the round trip from 91st Street and Memorial in Tulsa to the property near Sallisaw takes approximately three hours and 35 minutes, one hour and 45 minutes to one hour and 50 minutes each way. (TR 746-47) The trip from Chaney's trailer in Jenks to the telephone booth at 61st and Yale takes approximately 12 to 14 minutes. (TR 804-08)

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3 Dr. Loyd White, M.D., a pathologist called as a witness by the petitioner, testified based on the autopsy profile done by Dr. Hoffman, that Kendal Ashmore had been dead only since March 21 or March 22. (TR 1045-47)

In an order denying application for post-conviction relief, Tulsa County District Court Judge Jay Dalton commented, "As the Court has stated the evidence in the trial of this case established one of the strongest cases against a criminal defendant that the Court has witnessed as a trial judge..." (Order Denying Application for Post-Conviction Relief, July 27, 1981, p. 4).

In its order affirming petitioner's conviction and sentence, the Oklahoma Court of Criminal Appeals commented, "We are of the opinion that this case is one of the most heinous and cruel cases considered by this Court. The manner in which the women were killed, coupled with the ransom and the manner in which the bodies were disposed of, justifies the imposition of the death sentence." Chaney v. State of Oklahoma, 612 P.2d 269, 283 (1980).

Counsel for the defense states in the petition now before the Court, "while evidence exists which could be construed to indicate the petitioner was involved in a kidnapping, at no time was any direct evidence presented showing that this petitioner was the actual perpetrator of the murder." (Petition for Writ of Habeas Corpus By a Person in State Custody, June 15, 1983,p.18).

The salient corroborative evidence linking the petitioner to the kidnapping and murder is as follows:

- The victim's husband received three extortion telephone calls, all from the same person. The second telephone call was traced to petitioner's

trailer home telephone in Jenks, Oklahoma. The third call was traced to a pay telephone booth at 61st Street and Yale, Tulsa, Oklahoma. A palm print matching Chaney's was lifted from the receiver of that telephone.

- A torn piece of paper found in the trash can of Chaney's residence, when reassembled, contained the words, "Richard Elloit", "1:00 p.m.", "Thursday" and the Ashmore's telephone number. The handwriting was Chaney's and his fingerprints were lifted from the paper. The note of the victim on the same subject was found in the victim's pickup truck.
- Law enforcement officials saw a silver Corvette, driven by a white male, come from the area of the rodeo grounds in Jenks, Oklahoma, where the extortionist had directed Ashmore to leave the money. The Corvette matched the description of a silver Corvette owned by Chaney.
- The victims had been bound, gagged and strangled with strips of white terrycloth or towel. The operator of a motel in Sallisaw, where Chaney spent the night before on March 16, testified three towels were missing from the room after Chaney checked out the morning of March 17.

- The bodies of the victims were found in shallow graves on land leased by Chaney.
- A pick-ax found at Chaney's residence had soil particles on it which were similar to the soil at the location where the victims were buried.
- The petitioner was seen driving from the area near the burial site late in the afternoon of the kidnapping. During the same time period, he visited a convenience store near Sallisaw, and the owner observed he was covered with dirt from the knees down.

An analysis of petitioner's grounds of error A through G follows:

A.

THE SENTENCE OF DEATH IS DISPROPORTIONATE AND EXCESSIVE IN VIEW OF THE PETITIONER'S ALLEGED INVOLVEMENT.[4]

Petitioner contends the sentence of death is disproportionate and excessive in view of the alleged lack of evidence of his involvement in the murder of Kendal Ashmore.

Petitioner argues the record in this case is void of any evidence which shows he had knowledge that the murder was to be committed, that he intended that a murder be committed, or that the petitioner was the actual murderer, and that under Enmund v. Florida, ____ U.S. _____, 50 U.S.L.W. 5087 (July 2, 1982), imposition of the death penalty is therefore unconstitutional.

In Enmund, the petitioner and a codefendant were convicted by a jury in a Florida trial court of the robbery and first-degree murder of two elderly persons at their farmhouse. Both

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4 Petitioner raised this issue in his direct appeal to the Court of Criminal Appeals of the State of Oklahoma, which affirmed the conviction and sentence on May 15, 1980. The issue was then raised in a petition for a writ of certiorari to the United States Supreme Court, which was denied on May 23, 1981. Thereafter, it was raised in a petition for a writ of habeas corpus filed in the United States District Court for the Northern District of Oklahoma, which dismissed the petition on June 25, 1982. Tulsa County District Judge Jay Dalton permitted petitioner to raise the issue again in an application for post-conviction relief under the doctrine of intervening change in law after the United States Supreme Court's ruling in Enmund v. Florida, ____ U.S. _____, 50 U.S.L.W. 5087 (July 2, 1982). Petitioner's application was denied by Judge Dalton on August 9, 1982. The issue was then raised in petitioner's petition seeking appeal from the denial of post-conviction relief, which was denied by the state Court of Criminal Appeals on February 3, 1983.

were sentenced to death. The Florida Supreme Court affirmed Enmund's conviction for first-degree murder and the imposition of the death penalty, even though the record supported no more than an inference that Enmund was the person in a getaway car parked near the farmhouse. The state court found the evidence sufficient to show Enmund was a constructive aider and abettor, and hence a principal in first degree murder upon whom the death penalty could be imposed. Id. at 5089.

The United States Supreme Court reversed, holding imposition of the death penalty under those circumstances was inconsistent with the Eighth and Fourteenth Amendments. Id. at 5089. In so holding, the Court said:

> "The question before us is not the disproportionality of death as a penalty for murder, but rather the validity of capital punishment for Enmund's own conduct. The focus must be on his culpability, not on that of those who committed the robbery and shot the victims, for we insist on individualized consideration as a constitutional requirement in imposing the death sentence....Enmund did not kill or attempt to kill and thus his culpability is plainly different from that of the robbers who killed, yet the state treated them alike and attributed to Enmund the culpability of those who killed....This was impermissible under the Eighth Amendment."

Id. at 5091-92 (citations omitted).

Petitioner also cites Jones v. Thigpen, 555 F.Supp. 870, 878 (S.D.Miss. 1983), in which a Mississippi federal district court ruled that in the absence of a jury finding that the petitioner killed, attempted to kill or intended to kill, imposition of the death penalty was unconstitutional. In that case, the defendant

and two brothers were charged with committing murder in the course of an armed robbery. The evidence showed the defendant and the brothers were present when the victim was struck with a wrench. The court held this evidence alone was insufficient to infer that the defendant either struck the fatal blows or acquiesced.

The Tenth Circuit Court of Appeals has held that under Oklahoma law, a defendant cannot be convicted of first degree murder as an aider and abettor unless the evidence supports a finding that the defendant had full knowledge of the intent of the person who committed the murder. Sanders v. Logan, Slip Opinion No. 80-2123, June 13, 1983. In Sanders, the Court overturned the appellant's conviction for first degree murder of a convenience store clerk, concluding:

> "...the record does not support a rational finding, beyond a reasonable doubt, that Sanders committed a murder with premeditated design, or that as an aider and abettor she participated in such a crime with full knowledge of the intent of the persons who commit the [first degree murder] offense."

Id. at 21 (citations omitted).

Both the trial court and the state Court of Criminal Appeals found the Enmund case to be distinguishable from the present fact situation. See Order Denying Application for Post-Conviction Relief, August 9, 1982, pp. 6-7; Order Affirming Denial of Post-Conviction Relief, February 3, 1983, p. 4.

This Court concurs. In Enmund, the defendant had no knowledge of the intent of others to commit murder and no intent to

commit murder. In this case, there is no evidence any person except petitioner was involved in the murder. Moreover, the jury, in returning the verdict imposing the death penalty, specifically found the following four aggravating circumstances existed:

1) The defendant knowingly created a great risk of death to more than one person in that he did in fact kill, without authority of law, two persons, Kendal Inez Ashmore and Kathy Ann Brown, as the evidence shows.

2) The defendant committed the murder for remuneration or the promise of remuneration in that the evidence shows that the defendant kidnapped and killed both Kathy Ann Brown and Kendal Inez Ashmore and was attempting to extort $500,000 from the family of Kendal Inez Ashmore.

3) The murder was especially heinous, atrocious and cruel in that the defendant bound the victims and choked them to death with pieces of cloth and buried their bodies in a shallow grave.

4) The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution in that the evidence shows that the defendant killed the victims after kidnapping them in order to prevent them from testifying against defendant for the kidnapping charge.

All four aggravating circumstances require a finding of an intentional killing.

Petitioner argues that although the sentencing jury found all four aggravating circumstances existed, it did not make a specific finding of perpetration, knowledge or intent, as required by Enmund, supra, because the instructions under which the findings were made were flawed. In particular, petitioner cites Instruction No. 6 from the first stage of the trial, which stated in part:

> "You are further instructed that the phrase 'regardless of malice' means that the State is not required to prove that the homicide was committed with a deliberate intention, a premeditated design, on the part of the defendant to kill the deceased. A homicide, although unintended, if committed in the commission of kidnapping constitutes murder in the first degree."

Petitioner contends Instruction No. 10 from the second stage of the trial specifically required the jury to use all the instructions in the first stage. Therefore, the instructions did not require the jury to find premeditation, intent or knowledge.

The Court disagrees. Instruction No. 10 from the second stage provides in pertinent part:

> "All the previous instructions given you in the first part of this trial apply <u>where applicable</u> and must be considered together with these additional instructions." (Emphasis added)

The first stage of the trial determined petitioner's guilt or innocence on the murder charge. The second stage determined the sentence. Instruction No. 6 of the first stage instructed the jury on the elements of felony murder under 21 O.S.Supp. §701.7(B). It made no mention of the death penalty or the requisites for imposition of the death penalty. Therefore the

Court believes Instruction No. 6 was inapplicable in the second stage of proceedings.[5]

The instructions in the second phase of the trial explicitly informed the jury of the requirement for a finding of aggravating circumstances before the death sentence could be imposed. Instruction No. 4 of the second stage set forth the four aggravating circumstances alleged by the state, and Instruction No. 5 stated:

> "You are instructed that in the event you unanimously find that one or more of these aggravating circumstances existed beyond a reasonable doubt, then you would be authorized to consider imposing the sentence of death.
>
> "If you do not unanimously find beyond a reasonable doubt one or more of the statutory aggravating circumstances existed then you would not be authorized to consider the penalty of death. In that event the sentence would be imprisonment for life."

Instruction No. 9 provided:

> "You are instructed that the State has the burden of proving to your satisfaction, beyond a reasonable doubt, the existence of one or more statutory aggravating circumstances as set out in these instructions."

The Court believes the instructions, when read as a whole,

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5 Under 21 O.S. Supp. §701.7(B), the felony murder statute, a person who takes the life of another, regardless of malice, in the commission of certain felonies, is guilty of first degree murder. However, imposition of the death penalty for first degree murder requires a finding of one or more aggravating circumstances under 21 O.S. Supp. §701.10-12. Felony murder is not one of the aggravating circumstances for which the death penalty can be imposed. Therefore, the petitioner could not be sentenced to death for felony murder absent a finding of the existence of other enumerated aggravating circumstances.

clearly required the jury to make a finding of intent or premeditation before imposing the death sentence, and did not allow the jury to assess the death penalty merely on the basis of a conviction for felony murder. The jury did so find. A review of the record has shown ample evidence in support of the finding that petitioner intentionally killed Kendal Ashmore. Therefore, petitioner's argument that the death sentence is disproportionate to his alleged involvement is unfounded.

B.

THE PETITIONER WAS DENIED REQUESTED EXCULPATORY EVIDENCE WHICH WAS MATERIAL BOTH TO GUILT OR INNOCENCE AS WELL AS PUNISHMENT.[6]

Petitioner's motion to produce filed prior to preliminary hearing and trial requested, among other items, all statements of individuals interviewed by law enforcement officials. Several years after petitioner's trial and conviction, pursuant to a request made by the Tulsa World newspaper under the Freedom of Information Act, petitioner was given four typed statements made by individuals to FBI agents. Petitioner claims the suppression of these alleged exculpatory statements by the State of Oklahoma violated his Fourteenth Amendment rights as enunciated by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976).

On May 1, 1981, a hearing on petitioner's application for post-conviction relief was held in the District Court of Tulsa County before Judge Jay D. Dalton. The hearing concerned petition-

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6 This issue was raised first in a post-conviction relief proceeding before Tulsa County District Judge Jay D. Dalton. Petitioner's application for post-conviction relief was denied by order dated July 27, 1981. On direct appeal, the Oklahoma Court of Criminal Appeals affirmed on November 12, 1981. The United States Supreme Court denied certiorari on April 5, 1982.

er's allegation that Tulsa County District Attorney S.M. Fallis, Jr., withheld the exculpatory statements in violation of the criteria set forth in Brady, supra. Fallis was the only witness called at the hearing although petitioner's attorney stated at the hearing he had the opportunity to talk to the three persons[7] making the statements to the FBI agents but chose not to call any of them as witnesses.[8]

Judge Dalton denied petitioner's application for post-conviction relief by an order dated July 27, 1981. On direct appeal, the Oklahoma Court of Criminal Appeals affirmed on November 12, 1981. Petitioner's petition for writ of certiorari to the United States Supreme Court was denied on April 5, 1982.

The typed statements of the first three witnesses provided as follows:

Poppy Weaver stated she saw Kendal Inez Ashmore on March 17, 1977 at 4:10 p.m., in Jenks, Oklahoma, a small town adjacent to Tulsa. Mrs. Ashmore was said to be sitting in her blue and white pickup truck with a man sitting next to her and a woman on the other side.[9] Petitioner claims Ms. Weaver's statement is exculpatory because it is inconsistent with the prosecution's

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7 At a hearing held before this Court on June 17, 1983, concerning petitioner's application for stay of execution and for an evidentiary hearing, petitioner's counsel advised the Court he received the fourth alleged exculpatory statement, that of Philip Ashmore made to an unknown FBI agent, in the last few months as a result of the appeal to the Tenth Circuit Court of Appeals of the Freedom of Information Act request made by a local newspaper.

8 Transcript of the May 1, 1981 hearing at pages 37-38.

9 See Exhibit I-1 to the Petition for Writ of Habeas Corpus.

theory of the case placing the petitioner in Sallisaw, Oklahoma approximately one hundred miles away at the time. At the post-conviction hearing, District Attorney Fallis testified he had previously talked to Ms. Weaver and she stated she could not testify the woman she saw on March 17, 1977 was Mrs. Ashmore.[10] As stated, petitioner's attorney interviewed Ms. Weaver and declined to call her as a witness at the post-conviction hearing.[11]

Mr. Hamilton (first name not reflected) rents pasture close to the intersection of 91st Street and Memorial Drive where the Ashmore pickup truck was discovered. Hamilton stated at 8:00 to 8:30 a.m., on March 18, 1977 he noticed a man leaving a pickup truck and entering a car parked on the other side of the empty produce building located at the intersection.[12] Fallis testified the pickup truck had been discovered about thirty minutes prior to Hamilton's sighting and that the person Hamilton thought he saw leaving the truck and get into the car was an employee of Mr. Ashmore, the husband of the victim.[13] Petitioner's attorney interviewed Mr. Hamilton and also declined to call him as a witness at the post-conviction hearing on May 1, 1981.

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10 Transcript of the May 1, 1981 hearing at page 25.

11 At the hearing before this Court on June 17, 1983, petitioner's counsel advised the Court he did not recall Ms. Weaver as a witness at the post-conviction hearing on May 1, 1981 because she had told him she could not testify the woman she saw on March 17, 1977 at about 4:10 p.m. was Mrs. Ashmore.

12 See Exhibit G-1 to the Petition for Writ of Habeas Corpus.

13 Transcript of the May 1, 1981 hearing at page 24.

Kyle West, a Jenks High School student riding home from school on the Jenks public school bus, stated he saw a red and white pickup truck with a "clip on" CB antenna parked at the 91st and Memorial intersection on March 17, 1977 at 4:00 to 4:30 p.m., and again at 5:30 p.m.[14] Fallis in substance testified the exculpatory nature of this evidence was not apparent.[15] Petitioner's attorney talked to the boy's mother but did not interview Kyle West personally and also chose not to call him as a witness at the post-conviction hearing on May 1, 1981.

On June 17, 1983 this Court heard oral arguments of the parties on the Brady issue in connection with petitioner's application for an evidentiary hearing under 28 U.S.C. §2254(d).[16] At that time the Court asked Mr. Smallwood, petitioner's attorney, what witnesses petitioner intended to call at the evidentiary hearing petitioner requested. Attorney Smallwood advised the Court of four witnesses petitioner would call with regard to the exculpatory evidence claim -- none of them the above three persons who gave purportedly exculpatory statements to the FBI agents interviewing them. Attorney Smallwood instead said petitioner would call Tom McClain, the FBI agent who took Ms. Weaver's statement for the purpose of establishing Ms. Weaver did state to him she saw Mrs. Ashmore on the afternoon of

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14 See Exhibit G-1 to the Petition for Writ of Habeas Corpus.

15 Transcript of the May 1, 1981 hearing at page 25.

16 On June 23, 1983 this Court denied petitioner's application for an evidentiary hearing.

March 17, 1977.[17] Also to be called as a witness was an unknown FBI agent who took Philip Ashmore's initial statement in which Mr. Ashmore, the husband of the deceased, stated the caller of the unrecorded first extortion telephone call told Ashmore, "There are four of us."[18] Petitioner desired to call Mr. Ashmore and question him about the statement, "There are four of us." Further, petitioner wished to Call S.M. Fallis, Jr., the District Attorney concerning why he withheld Ashmore's "there are four of us" statement and why this was never disclosed at trial.

Brady v. Maryland, supra, requires disclosure by the prosecution of evidence favorable to an accused upon request where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. The successful establishment of a Brady violation requires proof of: "(a) suppression by the prosecution after a request by the defense, (b) the evidence's favorable character for the defense, and (c) the materiality of the evidence." Moore v. Illinois, 408 U.S. 786, 794-95 (1972); Talamante v. Romero, 620 F.2d 784, 787 (10th Cir. 1980). When an omission is "material" is set forth in

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17 On July 8, 1981, a hearing was held before Tulsa County District Judge Jay D. Dalton on petitioner's application to reopen the post-conviction hearing of May 1, 1981. Attorney Smallwood sought to introduce testimony of Agent Tom McClain for the purpose of showing Poppy Weaver had at one time stated she saw Mrs. Ashmore in Jenks, Oklahoma on March 17, 1977 at 4:10 p.m. Judge Dalton denied the application to reopen the May 1, 1981 post-conviction hearing.

18 The fourth alleged exculpatory statement mentioned previously.

United States v. Agurs, 427 U.S. 97 (1976). Agurs sets forth three levels of materiality: first, in those cases in which the prosecution has knowingly used perjured testimony, the conviction must be set aside if there exists a reasonable likelihood that the false testimony could have affected the jury's verdict; second, where a pretrial request has been made for specific evidence, the judgment must be vacated where the suppressed evidence might have affected the outcome of the trial; and third, where there has been a general request for Brady material or no request at all, the test of materiality is whether the "omitted evidence creates a reasonable doubt [as to the defendant's guilt] that did not otherwise exist." United States v. Agurs, 427 U.S. at 112; Talamante v. Romero, 620 F.2d at 787-88. Petitioner's motion to produce appears to fall into the third category as a general request for Brady material. Thus, if there is no reasonable doubt about the defendant's guilt, even when the additional evidence is considered, there is no justification for a new trial. United States v. Agurs, 427 U.S. at 112-13.

In habeas corpus actions, a federal court must give the findings made by the state court judge a presumption of correctness. 28 U.S.C. §2254(d). The burden to establish that the factual determination by the state court was erroneous rests upon the habeas applicant to establish "by convincing evidence." Sumner v. Mata, 449 U.S. 539, 550 (1981). Judge Dalton, relying principally upon United States v. Agurs, supra, issued a five-page order on July 27, 1981 denying petitioner's application for

post-conviction relief on the basis of withheld Brady material, saying:

> "It appears to the Court in the context of the entire record herein, that the evidence sought to be presented by Petitioner in support of this Application would, at the time of trial, have tended, by its quality and quantity, to obscure rather than clarify the issues and facts for the jury....At most it is of little concrete evidentiary value, not demonstrably favorable to Petitioner and therefore not exculpatory....In the context of the total record herein, as supplemented by the proceedings of this Application, the Court is unconvinced not merely of the materiality of the proof now presented by Petitioner, the relationship or bearing this proferred evidence may have had upon a reasonable doubt of Petitioner's guilt, but moreover, the Court questions the relevancy of the evidence now presented by Petitioner....The Court therefore finds, in the context of the entire record conducted in this prosecution, that the evidence now presented by Petitioner Chaney would not have altered the demonstration of Petitioner's guilt beyond a reasonable doubt at trial herein."[19]

This Court concludes Judge Dalton's findings were adequately supported by the record and that petitioner has failed to establish Judge Dalton's conclusions were erroneous. The lack of materiality of the three witnesses' reported statements is strongly supported by the fact petitioner chose not to call any one of them as a witness at the May 1, 1981 post-conviction hearing nor the evidentiary hearing before this Court for which petitioner applied.

The statement of Philip Ashmore to the FBI agent about the extortion caller's statement, "There are four of us," was not in petitioner's possession during the post-conviction relief proceedings before Judge Dalton. Petitioner suggests the extortion caller's purported statement, "There are four of us," indicates

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19 Exhibit A1 to Petition for Habeas Corpus, pages 4-5.

other persons may have been involved with petitioner. At this stage, to give credence to or require an in-depth hearing concerning such extortionist hype would at best involve sheer speculation. This Court concludes the withheld statement when viewed in the context of the entire record would not have affected the jury's finding of guilt beyond a reasonable doubt or the jury's determination upon sentencing with regard to petitioner.

For the above reasons, the Court concludes petitioner was not denied exculpatory evidence which was material either to petitioner's guilt or his sentencing.

C.

PETITIONER WAS CONVICTED AND RECEIVED A RECOMMENDED SENTENCE OF DEATH FROM THE TRIAL JURY SELECTED IN VIOLATION OF WITHERSPOON v. ILLINOIS, 391 U.S. 510 (1968).[20]

The petitioner asserts that the exclusion of a juror, Ms. Feterly, for cause, who opposed the death penalty violated the rule of Witherspoon v. Illinois, 391 U.S. 510, 88 S.Ct. 1770, 30 L.Ed.2d 776 (1968). In Witherspoon the Supreme Court stated:

> "Specifically, we hold that a sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scruples against its infliction. No defendant can constitutionally be put to death at the hands of a tribunal so selected." 391 U.S. at 522-523.

The Court continued in a footnote:

> "We repeat, however, that nothing we say today bears upon the power of a State to execute a defendant sentenced to death by a jury from which the only veniremen who were in fact excluded for cause were those who made unmistakably clear (1) that they would automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of the case before them..." 391 U.S. at 522, fn.21.

Thus, potential jurors may not be excluded merely because of general objections to the death penalty but may be excused for cause if the juror could not under any circumstances vote to impose the death penalty.

The entire voir dire examination of the challenged juror taken from the trial transcript pages 95 through 100 follows:

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20 This issue was raised by the petitioner on direct appeal to the Oklahoma Court of Criminal Appeals which affirmed petitioner's judgment and sentence on May 15, 1980. This issue was also contained in a petition for writ of certiorari to the United States Supreme Court which was denied on March 23, 1981.

THE COURT: Is it Miss or Mrs. Feterly?

MS. FETERLY: Miss.

THE COURT: Ms. Feterly, where do you presently reside.

MS. FETERLY: 4614 South 30th West Avenue.

THE COURT: Are you employed, please, ma'am?

MS. FETERLY: Yes, sir, the Crystal Bowl Restaurant.

THE COURT: Where is that?

MS. FETERLY: Crystal Bowl Restaurant.

THE COURT: I'll ask you the same question I asked the other jurors. In a case where the law and evidence warrant, in a proper case, could you without doing violence to your conscience agree to a verdict imposing the death penalty?

MS. FETERLY: No, sir, I don't I believe I could.

THE COURT: If you found beyond a reasonable doubt that the defendant was guilty of murder in the first degree, and if under the evidence and circumstances it would permit you to consider a sentence of death, are your reservations of the dealth penalty, regardless of the law and facts and circumstances of the case, such that you could not inflict the death penalty?

MS. FETERLY: No, sir, I don't think I could.

THE COURT: Did you hear my question: Are your reservations about the death penalty such that regardless of the law and facts and circumstances of the case you would not inflict the death penalty?

MS. FETERLY: Yes, sir. I understand. I could not.

THE COURT: You could not do that?

MS. FETERLY: No, sir.

THE COURT: I'll excuse this juror for cause.

MR. SMALLWOOD: May I voir dire?

THE COURT: Yes.

MR. SMALLWOOD: Ms. Feterly, my name is Allen Smallwood, and I have the privilege and opportunity to represent Larry Chaney in this particular trial. The question sometimes as it comes from the bench and from the attorneys in the case are sometimes asked awfully fast, and it might make you a bit nervous. I think if I were in the same situation I would sometimes not know how to answer also. But the question, if I might put it a bit differently is: Is there no circumstances, absolutely and utterly no circumstances, under which you think that if it is valid law of the State of Oklahoma that an individual should suffer death if he is convicted, and that you could not impose the death penalty regardless of what you personally think about the law? In other words, you might personally think the law against speeding is wrong and you may not particularly agree with it, but you would obey it because it is the law. If the Judge instructed you it is the law of the State of Oklahoma that in finding an individual guilty of first degree murder, and you find other certain circumstances wherein you could impose the death penalty, are you saying there is no circumstances under which you could follow that instruction whether you agree with it or not? Could you follow that instruction if the Court so instructed you?

If you don't understand my question and it is too long, ask me.

MS. FETERLY: I understand, sir. I cannot personally set judgment on any individual's life. It is just too horrible to me and I could not do it.

MR. SMALLWOOD: That is your personal opinion and I respect that. But the question I'm asking you: Regardless of your personal opinion - and as I said, I respect your opinion - is it totally and utterly impossible for you to follow the Court's instructions regarding infliction of the death penalty under any case that you can conceivably imagine in your mind? That's what I'm asking you. Is there a case you can imagine where you could feel that the death penalty would be a proper penalty?

MS. FETERLY: Yes, sir.

MR. SMALLWOOD: I object to her being excused for cause.

THE COURT: When you stated, "Yes, sir," were you stating in general terms that you can understand there might be certain times this could occur but you could not do it personally yourself? If that what you are saying?

MS. FETERLY: I'm saying it would be so against my personal makeup that --

THE COURT: -- that you personally could not do it?

MS. FETERLY: I could not do it personally myself. I can understand the need for it, but I could not personally do it myself.

MR. FALLIS: We would ask she be excused unless the Court desires we conduct any voir dire of any particular protective nature.

MR. SMALLWOOD: I would ask for brief voir dire again, if I could.

THE COURT: Very well.

MR. SMALLWOOD: Ma'am, is the personal feeling that you hold so strong that it would prevent you from being an impartial juror in a guilty or innocent determination? For instance, if you had two decisions to make: Number one, whether an individual was guilty or innocent; and, number two, if you found him guilty you would have to determine the sentence - is your feeling so strong that you would be incapable of making a determination of guilt or innocence in the first proceeding?

MS. FETERLY: I fear it would be.

MR. SMALLWOOD: You feel it would make you totally incapable of determining guilt or innocence?

MS. FETERLY: I feel that I would -- it would be difficult or impossible for me to give the death penalty.

MR. SMALLWOOD: You are saying "difficult," but you're not saying it is absolutely impossible? That's the question. Would it be absolutely impossible for you to make a determination under any circumstances you can imagine in which you could do so, in which you could impose the death penalty?

MS. FETERLY: Yes.

MR. SMALLWOOD: I object to her being excused for cause.

THE COURT: Do you have any voir dire, Counsel?

MR. FALLIS: Yes.

I am S.M. Fallis and this is Ron Shaffer with me. May I ask you, ma'am: Your statement concerning your feelings

as to your capability, is it placed on a moral, religious or training background?

MS. FETERLY: No, sir. It is to me personally. I mean, personally, emotionally, my personal emotional makeup, it would be extremely difficult for me to do so. That is the reason why I could not be completely impartial. I do not believe I could do so.

MR. FALLIS: All right, ma'am. Do I understand you correctly that you are saying in a case where one of the potential punishments can be death you feel that that fact would make it impossible for you to be fair and impartial to both sides?

MS. FETERLY: Yes, sir.

MR. FALLIS: Your Honor, we renew our request.

MR. SMALLWOOD: If the Court please, I object. She stated there is a circumstances, and there is a situation in her mind where she feels she could impose the death penalty.

THE COURT: Ms. Feterly, I want to make sure I don't misunderstand what you are saying, but I think you made the statement you could not be fair and impartial in this particular case because the death penalty could possibly be imposed. Is that correct?

MS. FETERLY: Yes, sir.

THE COURT: You may be excused for cause.

MR. SMALLWOOD: Note my objection, Your Honor, and I ask for an exception, please.

THE COURT: You will have the exception.
You may call another juror." (Emphasis added)

Concerning the Witherspoon issue, the appellate court of the State of Oklahoma stated:

> "In the instant case, we believe that it was proper to excuse the juror. The defendant's attorney and the State's attorney questioned the woman; and both sides point to answers given by her, which they say support their respective arguments. But one of the tendencies of voir dire in a challenge situation is that the longer it lasts the less objective it becomes, as both parties

> attempt to phrase their questions in such a way as to elicit the desired answers. We are most impressed by the answers the prospective juror gave to the first questions asked by the trial court: [quoting]." Chaney v. State, 612 P.2d 269, 274 (Okl.Cr. 1980).

An analysis of the above-quoted trial record indicates the Oklahoma Court of Criminal Appeals correctly found the juror was properly excludable for cause under Witherspoon. Boulden v. Holman, 394 U.S. 478, 89 S.Ct. 1138, 22 L.Ed.2d 433 (1969); Maxwell v. Bishop, 398 U.S. 262, 90 S.Ct. 1578, 26 L.Ed.2d 221. In addition to the prospective juror saying it would be impossible under any circumstances for her to impose the death penalty, she stated since one of the potential punishments involved the death penalty it would be impossible for her to be fair and impartial to both sides. Exclusion for cause is proper where a potential juror could not follow her oath or the court's instructions or where the juror could not be impartial on the question of guilt. Adams v. Texas, 448 U.S. 38, 44, 100 S.Ct. 2521, 65 L.Ed.2d 581, 589 (1980). The state trial and appellate courts' finding that the challenged juror could not under any circumstances impose the death penalty, supported by the record, is entitled to the presumption of correctness embodied in 28 U.S.C.§2254(d) and Sumner v. Mata, 449 U.S. 539, 101 S.Ct. 764, 66 L.Ed.2d 722 (1981).

D.

THE PETITIONER WAS CONVICTED UNDER OKLAHOMA'S CAPITAL MURDER STATUTE, 21 O.S. 1981 §701.7 ET SEQ., WHICH AS APPLIED TO THE INSTANT CASE IS REPUGNANT TO THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE:

1. IT DENIES THE PETITIONER BENEFIT OF A PRESENTENCE INVESTIGATION, AND

2. ITS AGGRAVATING CIRCUMSTANCES ARE VOID FOR VAGUENESS, AND

3. IT FAILS TO DEFINE PROOF BEYOND A REASONABLE DOUBT, AND

4. IT ALLOWS IMPOSITION OF THE DEATH SENTENCE BASED UPON CIRCUMSTANTIAL EVIDENCE ONLY.[1]

In addressing petitioner's attack on Oklahoma's death penalty statute with respect to petitioner's claims D1 and D2, the Court of Criminal Appeals stated in Chaney v. State, 612 P.2d at 279, 280:

> "The fourteenth assignment of error is an attack on Oklahoma'a death Penalty statute and is divided into three subdivisions....
>
> "The third argument under this assignment is a shotgun-type argument in which the defendant attempts to make several points against the second stage of the bifurcated proceedings. The general tenor of the argument is that the Legislature has failed to insure that the death penalty will not be imposed in an arbitrary and discriminatory way.

---

1. D1 and D2 were raised in petitioner's direct appeal and also in his Petition for a Writ of Certiorari to the United States Supreme Court, which was denied on May 23, 1981 and in the Petition for Writ of Habeas Corpus filed in this Court, which was dismissed on June 25, 1982 because the Petition contained allegations which had not been exhausted in state court. Claims D3 and D4 were each raised in an application for post-conviction relief filed in Chaney v. State of Oklahoma, CRF-77-756, on June 28, 1982, and raised in a petition-in-error in the Court of Criminal Appeals on August 13, 1982. On August 9, 1982, Judge Jay Dalton denied the relief sought in the petitioner's application for post-conviction relief and the Court of Criminal Appeals affirmed Judge Dalton's denial of that relief on February 3, 1983.

He says that the use of a presentence investigation is improperly prohibited by 21 O.S.Supp.1979, § 701.10 and 22 O.S.Supp.1979, § 982; but the fact is that the trial judge is expressly prohibited from suspending a sentence of death by 22 O.S. 1971, § 1004. Since the only purpose of a presentence investigation is to guide the judge in deciding whether to grant probation, such an investigation is obviously superfluous in a death case.

"We are not moved by the defendant's complaint that the trial court limited him to evidence of mitigating circumstances which could be presented in compliance with the rules of evidence. The second stage of a murder trial is like the first stage in being a fact-finding hearing, and the rules of evidence must be followed. The defendant cites Lockett v. Ohio 438 U.S.586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), but we find nothing in that case indicating that the rules of evidence should be abrogated during the second stage.

"Another argument aimed at the second stage is the defendant's contention that the jury was not given any guidance in its evaluation of the aggravating and mitigating factors. Title 21 O.S. Supp.1979, § 701.12, names seven aggravating circumstances. Section 701.10 provides that evidence of any of these may be presented to the jury, provided the defendant has been given appropriate notice. Section 701.11 provides that the death penalty cannot be imposed unless at least one of these seven circumstances is found. Circumstances named are specific, not vague, and are readily understandable. Defendant's argument here fails to make its point.

"Section 701.11 also provides that the death penalty cannot be imposed if any aggravating circumstances found are outweighed by mitigating circumstances. Section 701.10 states that, 'evidence may be presented as to any mitigating circumstance.' (Emphasis added) We take this to mean that a defendant may present any relevant evidence, within the limitations of the rules of evidence, bearing on his character, prior record or the circumstances of the offense. In the second stage instructions, the judge told the jury that they were not limited in their consideration of mitigating circumstances, but

that they could consider any such circumstances they found from the evidence in the case. The jury was also instructed in accordance with Section 701.11 that the sentence would be life imprisonment if they found no aggravating circumstances or if mitigating circumstances outweighed the aggravating circumstances they found. We hold that these instructions gave the jury sufficient guidance to prevent an arbitrary or discriminatory application of the death penalty.

"Finally, under this assignment of error, the defendant attacks the specific aggravating circumstances used in his case. The seventh circumstance in Section 701.12 is, 'The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society.' This circumstance was alleged in the initial bill of particulars but was later dropped. The jury was not instructed on it and, contrary to the defendant's assertion, the District Attorney did not argue it. We do not understand why the defendant complains about it.

"The fourth circumstance named in Section 701.12 is that, 'The murder was especially heinous, atrocious, or cruel.' The defendant maintains that no adequate definitions exist for these three words and that any murder would satisfy that circumstance. Instruction No. 8 defined 'heinous' to mean 'extremely wicked or shockingly evil;' 'atrocious' was said to mean 'outrageously wicked and vile;' and 'cruel' was defined as 'designed to inflict a high degree of pain, utter indifference to, or enjoyment of, the suffering of others, pitiless.' Though other definitions of these words could perhaps suffice, the definitions employed gave the jurors adequate guidance. And in regard to the defendant's assertion that all murders are especially heinous, atrocious and cruel, the manner of death in one case may certainly be distinguishable from another in the degree of atrocity or cruelty. This entire assignment of error is without merit."

In his brief filed herein on June 24, 1983 (petitioner's brief), petitioner contends that without a presentence investigation (D1) "the sentencing body" is denied "information regarding the convicted individual's background, life, and character which can only be obtained,

in an objective manner, from a professional, such as a probation or parole officer, with sufficient training to present that evidence in a non-polemical posture." He cites Williams v. New York, 337 U.S. 241 (1949); Coker v. Georgia, 433 U.S. 584 (1977); Gregg v. Georgia, 428 U.S. 153 (1976); Furman v. Georgia, 408 U.S. 349 (1972) and Gardner v. Florida, 430 U.S. 349 (1977).

In Williams a New York state court jury found defendant guilty of murder in the first degree and recommended life imprisonment. The trial judge, after considering the evidence upon which the jury had convicted the defendant, and after being furnished information from the court's Probation Department, as well as other sources, imposed the death sentence. The information was furnished the court pursuant to the New York Criminal Code covering presentence investigation, which required the court to cause the defendant's previous criminal record to be submitted to it, and also any reports with respect to mental, psychiatric or physical examinations that may have been made. The Code also permitted the Court to seek any information that would aid the court in determining the proper sentence to be imposed. On appeal the defendant claimed that such procedures were in violation of the due process clause of the Fourteenth Amendment of the Constitution because the sentence of death was based upon information supplied by witnesses with whom the accused had not been confronted and as to whom he had no opportunity for cross-examination. In affirming the conviction and sentence the Supreme Court stated:

> "The considerations we have set out admonish us against treating the due process clause as a uniform command that courts throughout the

Nation abandon their age-old practice of seeking information from out-of-court sources to guide their judgment toward a more enlightened and just sentence. New York criminal statutes set wide limits for maximum and minimum sentences. (footnote omitted) Under New York statutes a state judge cannot escape his grave responsibility of fixing sentence. In determining whether a defendant shall receive a one-year minimum or a twenty-year maximum sentence, we do not think the Federal Constitution restricts the view of the sentencing judge to the information received in open court. The due process clause should not be treated as a device for freezing the evidential procedure of sentencing in the mold of trial procedure. So to treat the due process clause would hinder if not preclude all courts -- state and federal -- from making progressive efforts to improve the administration of criminal justice.

"It is urged, however, that we should draw a constitutional distinction as to the procedure for obtaining information where the death sentence is imposed. We cannot accept the contention. Leaving a sentencing judge free to avail himself of out-of-court information in making such a fateful choice of sentences does secure to him a broad discretionary power, one susceptible of abuse. But in considering whether a rigid constitutional barrier should be created, it must be remembered that there is possibility of abuse wherever a judge must choose between life imprisonment and death. And it is conceded that no federal constitutional objection would have been possible if the judge here had sentenced appellant to death because appellant's trial manner impressed the judge that appellant was a bad risk for society, or if the judge had sentenced him to death giving no reason at all. We cannot say that the due process clause renders a sentence void merely because a judge gets additional out-of-court information to assist him in the exercise of this awesome power of imposing the death sentence.

> "Appellant was found guilty after a fairly conducted trial. His sentence followed a hearing conducted by the judge. Upon the judge's inquiry as to why sentence should not be imposed, the defendant made statements. His counsel made extended arguments. The case went to the highest court in the state, and that court had power to reverse for abuse of discretion or legal error in the imposition of the sentence. (footnote omitted) That court affirmed. We hold that appellant was not denied due process of law." (footnote omitted)

In Coker, the defendant was convicted of rape and sentenced to death under the Georgia statute which provided that "[a] person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less that (sic) one nor more than 20 years." Georgia Code Ann. §26-2001 (1972). The United States Supreme Court held "that a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment." 433 U.S. at 592. The Court noted that in Gregg it had reserved the question of the constitutionality of the death penalty for crimes other than for deliberate murder. The Court also took occasion to discuss sentencing procedures under the Georgia Statute which, like the Oklahoma Statute, provides that punishment shall be determined by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty can be imposed. The Court stated "that imposing capital punishment, at least for murder, in accordance with the procedures provided under the Georgia statutes saves the sentence from the infirmities which led the Court to invalidate the prior Georgia capital punishment statute in Furman v. Georgia, supra." 433 U.S. at 591.

In Gardner, after a separate sentencing hearing pursuant to the Florida statute in capital cases the jury returned an advisory verdict to the court to impose a life sentence upon the defendant they had found guilty of first-degree murder. The trial judge refused to follow the jury's recommended action and sentenced the defendant to death as permitted under the Florida statute. The constitutionality of the Florida statute had been upheld by the United States Supreme Court in Proffitt v. Florida, 428 U.S. 242 (1976). As in Williams, the trial judge in Gardner ordered a presentence investigation report on which he relied in part, but portions of the report were not disclosed to counsel for the parties. The Supreme Court distinguished its earlier decision in Williams as follows:

> "[In Williams,] [t]his Court referred to appellant's claim as a 'narrow contention,' id., at 243, and characterized the case as one which
>
> > 'presents a serious and difficult question ... relat[ing] to the rules of evidence applicable to the manner in which a judge may obtain information to guide him in the imposition of sentence upon an already convicted defendant.' Id., at 244.
>
> "The conviction and sentence were affirmed, over the dissent of two Justices.
>
> "Mr. Justice Black's opinion for the Court persuasively reasons why material developed in a presentence investigation may be useful to a sentencing judge, and why it may not be unfair to a defendant to rely on such information even if it would not be admissible in a normal adversary proceeding in open court. We consider the relevance of that reasoning to this case in Part III of this opinion. Preliminarily, however, we note two comments by Mr. Justice Black that make it clear that the holding of Williams is not directly applicable to this case.
>
> "It is first significant that in Williams the material facts concerning the defendant's background which were contained in the presentence report were described in detail by the trial judge in open court. Referring to this material, Mr. Justice Black noted:

> 'The accuracy of the statements made by the judge as to appellant's background and past practices was not challenged by appellant or his counsel, nor was the judge asked to disregard any of them or to afford appellant a chance to refute or discredit any of them by cross-examination or otherwise.' Ibid.

"In contrast, in the case before us, the trial judge did not state on the record the substance of any information in the confidential portion of the presentence report that he might have considered material. (footnote omitted) There was, accordingly, no similar opportunity for petitioner's counsel to challenge the accuracy or materiality of any such information.

"It is also significant that Mr. Justice Black's opinion recognized that the passage of time justifies a re-examination of capital-sentencing procedures. As he pointed out:

> 'This whole country has traveled far from the period in which the death sentence was an automatic and commonplace result of convictions -- even for offenses today deemed trivial.' Id., at 247-248.

"Since that sentence was written almost 30 years ago, this Court has acknowledged its obligation to re-examine capital-sentencing procedures against evolving standards of procedural fairness in a civilized society. (footnote citing, inter alia, Gregg v. Georgia, is omitted)

The Court concluded "that petitioner was denied due process of law when the death sentence was imposed, at least in part, on the basis of information which he had no opportunity to deny or explain." Id. at 362.

The right to a presentence investigation, as that issue is framed in the instant case, was not an issue in Williams, Coker, Gregg, Furman or Gardner, and petitioner's reliance on those cases in support of his argument with respect to the presentence investigation provisions of Oklahoma's death penalty statute is misplaced.

Presentence investigation, at the time of Chaney's conviction and sentencing, was provided in felony cases except when the death sentence is imposed. 22 O.S.Supp.1975, § 982, reads as follows:

> "Whenever a person is convicted of a felony except when the death sentence is imposed, the court shall, before imposing sentence to commit any felon to incarceration by the Department of Correction, order a presentence investigation to be made by the Division of Probation and Parole of the Department. The Division shall thereupon inquire into the circumstances of the offense, and the criminal record, social history and present condition of the convicted person; and shall make a report of such investigation to the court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the judge so requesting, within a reasonsonable [sic] time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Division, it is desirable, the investigation shall include a physical and mental examination of the convicted person. The reports so received shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the court shall advise the defendant or his counsel and the district attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the district attorney desires, such hearing shall be ordered by the court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.
> 'If the district attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the court, whereupon the judge shall proceed with the sentencing.'"

The obvious purpose of the presentence investigation report is to provide the trial court with information prior to imposition of sentence so that the trial court may more intelligently exercise

discretion in imposing an appropriate sentence. Hall v. State, 548 P.2d 649 (Okl.Cr.1976). In Hall, the Court stated:

> "In passing, we observe that at judgment and sentencing on June 5, 1975, the trial court refused to order a presentence investigation report as was ostensibly required prior to imposition of a sentence committing a felon to incarceration by the Department of Corrections under 57 O.S.Supp.1974, § 519 (now see, 22 O.S. Supp.1975, § 982, effective June 17, 1975). However, in the present case (sic) a report would have served no purpose and was unnecessary for the reason that punishment was assessed by the jury and trial court was without authority to defer or suspend the sentence under 22 O.S. 1971, §§ 991a and 991c, as the evidence before the trial court established that defendant had two prior felony convictions. The obvious purpose of the Legislature in adopting the aforementioned statute was to expose the trial court to more complete information prior to the imposition of sentence, and thereby enable the trial court to more intelligently exercise its discretion in selecting from available alternatives upon sentencing. The trial court here had no alternative but to sentence defendant to imprisonment in accordance with the verdict of the jury, and the statute otherwise requiring a presentence investigation report was therefore without applicability." Id. at 652.

In Irvin v. State, 617 P.2d 588, 594 (Okl.Cr.1980) the Court stated:

> "Under the appellant's claim that the state had the duty to provide him with a pretrial presentence report, we note his citations of authority are not in point. Further, we are unaware of any authority mandating a pretrial presentence report in a capital case."

"A person who is convicted of ... murder in the first degree shall be punished by death or by imprisonment for life." (emphasis added) 22 O.S.A. §701.9A. In Morgan v. State, 545 P.2d 1265 (Okl. Cr.1976), the defendant was convicted of delivering marijuana under a statute prohibited the court from suspending or deferring sentence or granting probation. Defendant claimed "the trial court erred in

failing to delay sentencing pending the receipt of a pre-sentence investigation report" pursuant to 57 O.S.Supp.1974 § 519. The court held:

> "We are of the opinion that although the terms of 57 O.S.Supp.1974, § 519 appear to be mandatory, it is unnecessary to reach that issue in this case since at the time the Appellant was sentenced the Legislature expressly prohibited the court from suspending, deferring, or granting probation. We do not believe that the Legislature intended the court to do a vain and useless thing and that it was not the Legislative intent to require pre-sentence reports in such cases at that time." Id. at 1270.

In Eddings v. Oklahoma, ____ U.S. ____, 102 S.Ct. 869 (1982), the Supreme Court considered the sentencing procedures of the Oklahoma death penalty statute. In that case the trial judge, at the conclusion of the sentencing hearing, did "not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance." Id. at 873. He concluded that "in following the law" he could not "consider the fact of this young man's violent background." Ibid. The Supreme Court reversed and remanded the case for further proceedings, holding that under the sentencing provisions of the Oklahoma death penalty statute "the state courts must consider all relevant evidence and weigh it against the evidence of the aggravating circumstances." Id. at 877. The Court said:

> "Beginning with Furman, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met 'by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance.' Id., at 195, 96 S.Ct. at 2935. By its requirement that the jury find

> one of the aggravating circumstances listed in the death penalty statute, and by its discretion to the jury to consider 'any mitigating circumstances,' the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to 'the characteristics of the person who committed the crime....' Id., at 197, 96 S.Ct. at 2936. (footnote omitted)
>
> . . .
>
> "Thus, the rule in Lockett followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus 'on the characteristics of the person who committed the crime,' Gregg v. Georgia, 428 U.S., at 197, 96 S.Ct., at 2936, the rule in Lockett recognizes that 'justice ... requires that there be taken into account the circumstances of the offense together with the character and propensities of the offender.' Pennsylvania v. Ashe, 302 U.S. 51, 55, 58 S.Ct. 59, 60, 82 L.Ed. 43 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced by ignoring individual differences is a false consistency." Id. at 874, 875.

Because 22 O.S.A. § 701.10 provides for a sentencing proceeding upon conviction of a defendant of murder in the first degree "to determine whether the defendant should be sentenced to death or life imprisonment ... in [which] sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in [the] act," a presentence investigation and report would in all probability provide no additional information that would not otherwise be brought to the attention of the jury or the Court in the advisory sentencing procedures required under the Oklahoma death penalty statute.

The statute clearly meets the sentencing procedure requirements of Gregg and Lockett as expressed in Eddings. Therefore, petitioner's claim based on the statutes denial of a presentence investigation is denied.

Petitioner next contends that 22 O.S.A. § 701.12, which defines the "[a]ggravating circumstances" to be considered by the jury is "void for vagueness." (D2). § 701.12 provides:

> "Aggravating circumstances shall be:
> 1. The defendant was previously convicted of a felony involving the use or threat of violence to the person;
> 2. The defendant knowingly created a great risk of death to more than one person;
> 3. The person committed the murder for remuneration or the promise of remuneration or employed another to commit the murder for remuneration or the promise of remuneration;
> 4. The murder was especially heinous, atrocious, or cruel;
> 5. The murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution;
> 6. The murder was committed by a person while serving a sentence of imprisonment on conviction of a felony;
> 7. The existence of a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; or
> 8. The victim of the murder was a peace officer as defined by Section 99 of Title 21 of the Oklahoma Statutes, or guard of an institution under the control of the Department of Corrections, and such person was killed while in performance of official duty."

Petitioner urges that the particular aggravating circumstances alleged by the State "that 'the defendant committed the murder for remuneration. ... and that 'the murder was especially heinous, atrocious, and cruel ...' ... as applied to [him], were never defined for the benefit of the jury, and as such, are constitutionally void as

being too vague to prevent the '... wholly arbitrary and capricious action. [sic]' forbidden in Gregg v. Georgia, supra., at 189." (Petitioner's brief at 20). Petitioner further states in his brief that "the Court of Criminal Appeals has specifically held that murder for remuneration, as used in this aggravating circumstance, [ransom demand made by an extortion caller], means only murder for hire, or a hired killing, not merely evidence that an individual benefited from the murder. Johnson v. State, 53 OBJ No. 11, page [730] (March 12, 1982)." Ibid. The court in Johnson did "find that the statutory language in Title 21 O.S. 1980, § 701.12(3), does not apply in a robbery-murder situation," 53 OBJ No. 11 at 735. However, the court further found:

> "Murder for remuneration has also been applied to killings motivated primarily to obtain proceeds from an insurance policy, murder of a testator in order to secure a devise or legacy, and killings which occur in a kidnapping-extortion situation. See Chaney v. State, 612 P.2d 269 (Okl.Cr.1980); O'Bryan v. State, 591 S. W.2d 464 (Tex.Crim.1979)." Ibid.

As to the two aggravating circumstances referred to by Petitioner, in Chaney, the jury was charged in Instruction No. 4 as follows:

> "You are instructed that in arriving at your determination of punishment you must first determine whether at the time this crime was committed any one or more of the following statutory aggravating circumstances existed beyond a reasonable doubt.
>
> . . . .
>
> 2. The defendant committed the murder for remuneration or the promise of remuneration in that the evidence shows that the defendant kidnapped and killed both Kathy Ann Brown and and Kendal Inez Ashmore and was attempting to extort $500,000.00 in money from the family of Kendal Inez Ashmore.

3. The murder was especially heinous, atrocious, and cruel in that the defendant bound the victims and choked them to death with pieces of cloth and buried their bodies in a shallow grave.

. . ."

Instruction No. 8 stated:

"You are further instructed that the term 'heinous,' as that term is used in these instructions means extremely wicked or shockingly evil, and that 'atrocious' means outrageously wicked and vile; and 'cruel' means designed to inflict a high degree of pain, utter indifference to, or enjoyment of, the suffering of others, pitiless."

With respect to Instruction No. 8, petitioner argues:

"The only evidence which the State presented to the jury regarding this murder being 'especially heinous, atrocious, and cruel' was testimony elicited during the first stage of the trial from Dr. Hoffman in response to a question by the State regarding the amount of force necessary to effect a strangulation death (TR. 837), and evidence elicited upon cross-examination of the defendant's expert medical witness, Dr. Lloyd White, regarding the amount of pain or mental awareness the victim experienced immediately prior to her death. (TR. 1048-1049)" (Petitioner's brief at 21)

He further argues:

"[Instruction No. 8] fails to define this particular aggravating circumstance sufficient to channel the discretion [of the jury] in such a manner as to '. . . minimize the risk of wholly arbitrary and capricious action.' Gregg v. Georgia, supra., at 189. These aggravating circumstances, as apply to petitioner, fail to channel the jury's discretion in determining the sentence by 'clear and objective standards,' Gregg v. Georgia, supra., at 198, that give 'specific and detailed guidance,' Proffitt v. Florida, 428 U.S. 253 (1976), and that 'make rationally reviewable the process for imposing a sentence of death.' Woodson v. North Carolina, supra., at 280."

In Gregg, the Supreme Court stated:

"While some have suggested that standards to guide a capital jury's sentencing deliberations are impossible to formulate, (footnote omitted)the fact is that such standards have been developed. When the drafters of the Model Penal Code faced this problem, they concluded 'that it is within the realm of possibility to point to the main circumstances of aggravation and of mitigation that should be weighed and weighed against each other when they are presented in a concrete case.' ... (footnote 44 sets out relevant provisions of "the Model Penal Code," which are included, in part, in this Order at Page) While such standards are by necessity somewhat general, they do provide guidance to the sentencing authority and thereby reduce the likelihood that it will impose a sentence that fairly can be called capricious or arbitrary. (footnote omitted) Where the sentencing authority is required to specify the factors it relied upon in reaching its decision, the further safeguard of meaningful appellate review is available to ensure that death sentences are not imposed capriciously or in a freakish manner.

"In summary, the concerns expressed in Furman that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.

"We do not intend to suggest that only the above described procedures would be permissible under Furman or that any sentencing system constructed along these general lines would inevitably satisfy the concerns of Furman, (footnote omitted) for each distinct system must be examined on an individual basis. Rather, we have embarked upon this general exposition to make clear that it is possible to construct capital-sentencing systems capable of meeting Furman's constitutional concerns. (footnote omitted)." 428 U.S. at 193-195.

The Model Penal Code as set out in Gregg, 428 U.S. at 193, 194, proposes the following standards:

"(3) Aggravating Circumstances.

. . .

"(c) At the time the murder was committed the defendant also committed another murder.

. . .

"(e) The murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

"(f) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from lawful custody.

"(g) The murder was committed for pecuniary gain.

"(h) The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity."

The petitioner in Gregg attacked the "statutory aggravating circumstance, which authorizes imposition of the death penalty if the murder was 'outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim,' contending that it is so broad that punishment could be imposed in any murder case." 428 U.S. at 201. The Court stated that "[i]t is, of course, arguable that any murder involves depravity of mind or an aggravated battery. But this language need not be construed in this way, and there is no reason to assume that the Supreme Court of Georgia will adopt such an open-ended construction." Ibid.

An attack was also made in Proffitt on the aggravating circumstance authorizing the death penalty to be imposed if the capital felony is "especially heinous, atrocious, or cruel," 428 U.S. at 255, which quoted language is identical to aggravating circumstance No. 4

in the Oklahoma statute. In Proffitt, the Supreme Court held that the sentencing procedures in the Florida statute "seek to assure that the death penalty will not be imposed in an arbitrary manner." Id. at 253. In reference to the "aggravating circumstances" provisions under attack in that case, the Court stated:

> ". . . petitioner attacks the eighth and third statutory aggravating circumstances, which authorize the death penalty to be imposed if the crime is 'especially heinous, atrocious, or cruel,' or if '[t]he defendant knowingly created a great risk of death to many persons.' §§ 921.141(5)(h), (c) (Supp.1976-1977). These provisions must be considered as they have been construed by the Supreme Court of Florida.
>
> "That court has recognized that while it is arguable 'that all killings are atrocious, . . . [s]till, we believe that the Legislature intended something 'especially' heinous, atrocious or cruel when it authorized the death penalty for first degree murder.' Tedder v. State, 322 So.2d, at 910. As a consequence, the court has indicated that the eighth statutory provision is directed only at 'the conscienceless or pitiless crime which is unnecessarily torturous to the victim.' State v.Dixon, 283 So.2d, at 9. See also Alford v. State, 307 So.2d 433, 445 (1975); Halliwell v. State, supra, at 561. (footnote omitted) We cannot say that the provision, as so construed, provides inadequate guidance to those charged with the duty of recommending or imposing sentences in capital cases. See Gregg v. Georgia, ante, at 200-203."

The Supreme Court in Woodson held 'that the death sentences imposed upon the petitioners under North Carolina's mandatory death sentence statute violated the Eighth and Fourteenth Amendments and therefore must be set aside." 428 U.S. at 305. The court said:

> "This Court has previously recognized that "[f]or the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender.' Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55 (1937). Consideration of both the

> offender and the offense in order to arrive at a just and appropriate sentence has been viewed as a progressive and humanizing development. See Williams v. New York, 337 U.S., at 247-249; Furman v. Georgia, 408 U.S., at 402-403 (Burger, C. J., dissenting). While the prevailing practice of individualizing sentencing determinations generally reflects simply enlightened policy rather than a constitutional imperative, we believe that in capital cases the fundamental respect for humanity underlying the Eighth Amendment, see Trop v. Dulles, 356 U.S., at 100 (plurality opinion), requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." Id. at 304.

The aggravating circumstances 3 and 4 under § 701.12 and the instructions given in Chaney as to each, provide adequate guidance to the jury so as to assure that capital punishment will "be imposed fairly, and with reasonable consistency," and the jury's attention will be "properly confined and directed . . . to the circumstances of the particular crime and 'to the characteristics of the person who committed the crime.'" Eddings v. Oklahoma, ____ U.S. at ____, 102 S.Ct. at 874, 875. Petitioner's reliance on Gregg, Johnson, Proffitt and Woodson in support of his claim that the aggravating circumstances provisions of the Oklahoma statute are void for vagueness (D2) is also ill founded. Therefore, petitioner's claim on this ground (D2) is denied.

Petitioner next contends that "Oklahoma's capital murder statute, as applied to petitioner, is unconstitutional because it fails to define proof beyond a reasonable doubt (D3)."[2] In support of this

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2 As noted above in Footnote 1, issues raised by Petitioner in D3 and D4 could have been, but were not, raised in

claim, Chaney cites In Re Winship, 397 U.S. 358 (1970); Jackson v. Virginia, 443 U.S. 307 (1979) and Atterberry v. State, 555 P.2d 1301 (Okl.Cr.1976). Chaney argues that this requirement is applicable to punishment as well as the initial question of guilt.

In Winship, the Court stated "[t]his case presents the single, narrow question whether proof beyond a reasonable doubt is among the 'essentials of due process and fair treatment' required during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult." 397 U.S. at 359. The Court concluded:

> "In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault - notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination. We therefore hold, in agreement with Chief Judge Fuld in dissent in the Court of Appeals, 'that, where a 12-year-old child is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process . . . the case against him must be proved beyond a reasonable doubt.' 24 N.Y.2d, at 207, 247 N.E.2d, at 260" Id. at 368.

In Jackson, the Supreme Court, after referring to its ruling in Winship, stated that the question presented in Jackson "is what standard is to be applied in a federal habeas corpus proceeding when

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petitioner's direct appeal. As stated by the court in Holcomb v. Murphy, No. 82-15449, slip op. at 11 (10th Cir., filed March 9, 1983), "Fay v. Noya is still the law and enunciates a broad enough rule to permit federal habeas consideration of issues not raised in a direct state appeal." Because of the severity of the sentence in the instant case, the Court has elected "to treat the issues on their merits as permitted by Fay. See 372 U.S. at 438." Ibid.

the claim is made that a person has been convicted in a state court upon insufficient evidence." 443 U.S. at 309. The Court further said:

> "After Winship the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. (footnote omitted) But this inquiry does not require a court to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' Woodby v. INS, 385 U.S., at 282 (emphasis added in original). Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Johnson v. Louisiana, 406 U.S., at 362. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution. (footnote omitted) The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law (footnote omitted)." Id. at 318, 319.

The court held:

> ". . . that in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254 - if the settled procedural prerequisites for such a claim have otherwise been satisfied - the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt behond a reasonable doubt. (footnote omitted)" Id. at 324.

Petitioner argues that the burden of proof beyond a reasonable doubt "is that quality and/or quantity of evidence necessary for a fact finding body to return a verdict of guilt." (petitioner's brief at 22). He further contended:

> "[I]n order for a jury to make such a decision 'by clear and objective standards that provide specific and detailed guidance,' Godfrey v. Georgia, supra, at 420, the statutory definition of the burden of proof is mandatory. Not only is this definition omitted from Oklahoma's capital murder statute, trial courts are specifically prohibited from giving an instruction which defines this term. Brookshire v. State, 284 P.2d 752, 754 (Okl.Cr.1955). This prohibition leads inevitably to each juror defining the burden of proof for himself or herself which is done in a standardless and arbitrary manner specifically prohibited by the various Supreme Court cases cited in this Proposition. By allowing each juror to define the burden of proof as he or she sees fit the trial court allowed a level of unreliability and uncertainty to permeate the fact finding process which cannot be tolerated in a capital case. Hopper v. Evans, ____ U.S. ____, 102 S.Ct. 2049 (1982)." (Petitioner's brief at 22, 23)

In Godfrey v. Georgia, 446 U.S. 420 (1980) the Supreme Court set aside the death sentences as to petitioner on the grounds that the circumstances of the case did "not satisfy the criteria laid out by the Georgia Supreme Court itself in the Harris and Blake cases". Id. at 432. The court stated:

> "The Harris and Blake opinions suggest that the Georgia Supreme Court had by 1977 reached three separate but consistent conclusions respecting the § (b)(7) aggravating circumstance. The first was that the evidence that the offense was 'outrageously or wantonly vile, horrible or inhuman' had to demonstrate 'torture, depravity of mind, or an aggravated battery to the victim.' (footnote omitted) The second was that the phrase,

'depravity of mind,' comprehended only the kind of mental state that led the murderer to torture or to commit an aggravated battery before killing his victim. The third, derived from Blake alone, was that the word, 'torture,' must be construed in pari materia with 'aggravated battery' so as to require evidence of serious physical abuse of the victim before death. (footnote omitted) Indeed, the circumstances proved in a number of the § (b)(7) death sentence cases affirmed by the Georgia Supreme Court have met all three of these criteria. (footnote omitted)

"The Georgia courts did not, however, so limit § (b) (7) in the present case. No claim was made, and nothing in the record before us suggests, that the petitioner committed an aggravated battery upon his wife or mother-in-law or, in fact, caused either of them to suffer any physical injury preceding their deaths. Moreover, in the trial court, the prosecutor repeatedly told the jury - and the trial judge wrote in his sentencing report - that the murders did not involve 'torture.' . . ." Id. at 431, 432.

The facts in Godfrey showed that the petitioner shot his wife in the forehead and killed her instantly then shot his mother-in-law, striking her in the head and killing her instantly. The Court concluded that under the circumstances "the Georgia Supreme Court can [not] be said to have applied a constitutional construction of the phrase of 'outrageously or wantonly vile, horrible or inhuman in that [the murders] involved . . . depravity of mind. . . .' . . . The petitioner's crimes cannot be said to have reflected a consciousness materially more 'depraved' than than of any person guilty of murder."

Hooper involved habeas corpus proceedings in which petitioner sought "to have the conviction set aside on the ground, inter alia, that he had been convicted and sentenced under a statute which unconstitutionally precluded consideration of lesser included offenses."

____ U.S. ____, 102 SCt. at 2049, 2050. The Court stated that "[t]he Judge instructed the jury that it could not convict respondent merely on the basis of his confession, but must consider all the evidence, and could find him guilty only if the State had proved its case beyond a reasonable doubt." Id. at 2051.

In Holland v. United States, 209 F.2d 516, 522, 523, (10th Cir. 1954), aff 348 U.S. 121, the Court stated:

> ". . . There are many definitions of 'reasonable doubt'. Some courts assert that the words themselves carry their own best definition and that any attempts at clarification or definition tend only to confuse an otherwise simple phrase. See 20 Am.Jr.Evidence, Sec. 1257; 53 Am.Jr.Trial, Sec. 751; 36 Words & Phrases, Reasonable Doubt, pp. 297, 319; Wigmore on Evidence, 3rd Ed., Vol. IX, Sec. 2497. Under the federal rule, however, the accused is entitled to a definition of the term 'reasonable doubt', and failure to instruct upon request has been held to constitute error." (emphasis added)

"'Attempts to explain the term 'reasonable doubt' do not usually result in making it any clearer to the minds of the jury.'" Holland v. United States, 348 U.S. 121, 140 (1954), citing Miles v. United States, 103 U.S. 304, 312.

In Pannell v. State, 649 P.2d 568, 570 (Okl.Cr.1982), the Court stated:

> "An attempt to define 'reasonable doubt' by a trial judge is reversible error. Jones v. State, 554 P.2d 830 (Okl.Cr.1976). The phrase 'reasonable doubt' is self-explanatory; definitions do not clarify its meaning, but rather tend to confuse the jury and should not be given. Templer v. State, 494 P.2d 667 (Okl.Cr. 1972). In Templer, supra, we stated that the same logic should apply in attempts in voir dire examinations to explain to the jury what is meant by 'reasonable doubt'."

22 O.S.A. § 701.11 requires the trial judge in the sentencing proceeding to give such "statutory instructions as determined by the trial judge to be warranted by the evidence . . . in the charge and in writing . . . for its deliberation." It is further provided:

> "The jury, if its verdict be a unanimous recommendation of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Unless at least one of the statutory aggravating circumstances enumerated in this act is so found or if it is found that any such aggravating circumstance is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. If the jury cannot, within a reasonable time, agree as to punishment, the judge shall dismiss the jury and impose a sentence of imprisonment for life."

In the instant matter during the first phase of the trial to determine guilt or innocence, the Court charged the jury in Instruction No. 7 as follows:

> "You are instructed that the Statutes of this State provide:
>
> 'A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being.'
>
> "Malice in its legal sense is not necessarily ill will or hatred. Malice, as that term is used in this statute, is a deliberate intention, a premeditated design to take away the life of a human being which is manifested by external circumstances capable of proof. Malice aforethought may be formed at any time before the unlawful act and may be proven by either direct or circumstantial evidence and from the circumstances which acccmpany and characterize the act itself.
>
> "The question of deliberate intention is a question of fact to be determined by the jury from all of the evidence like every other material fact in the case. The law does not require that a deliberate intention be proved only by direct and

positive testimony. The existence of a deliberate intention, as well as its formation, are operations of the mind, as to which direct and positive testimony cannot always be obtained; therefore, the law recognizes that it may be proved by circumstantial evidence. It will be sufficient proof of such deliberate intention if the circumstances attending the homicide and the conduct of the accused convince you beyond a reasonable doubt of the existence of such deliberate intention at the time of the homicide.

"In connection with the phrase circumstantial evidence as used in this instruction, you are further instructed:

"That evidence may be either direct or indirect. Indirect evidence is known also as circumstantial evidence. Direct evidence is that which proves a fact in dispute directly, without an inference or presumption, and which in itself, if true, conclusively establishes the fact.

"Indirect or circumstantial evidence is that which tends to establish a fact in dispute by proving another fact which, though true, does not of itself conclusively establish the fact in issue, but which affords an inference or presumption of its existence.

"To warrant a finding upon circumstantial evidence, each fact necessary to the conclusion sought to be established (that is malice aforethought) must be proved by legal and competent evidence beyond a reasonable doubt. Further, all the facts and circumstances proved must not only be consistent with such finding but consistent with each other and inconsistent with any other reasonable conclusion and sufficient to produce in your minds a reasonable moral certainty that the accused committed the offense charged against him with malice aforethought.

"You are instructed that when the circumstances are sufficient, under the rules hereingiven (sic) you, then such evidence is to be regarded by the jury as being of the same competency as direct evidence."

Instruction No. 8 states:

"The State relies for a conviction in this case upon what is known as circumstantial evidence, and in this connection you are instructed that to warrant

a conviction upon circumstantial evidence each fact necessary to the conclusion sought to be established, that is, the guilt of the defendant, or either of them, must be proved by legal and competent evidence beyond a reasonable doubt, and all the facts and circumstances proved must not only be consistent with the guilt of the accused defendant, but consistent with each other, and inconsistent with any other reasonable hypothesis or conclusion than that of the guilt of the defendant, and sufficient to produce in your minds a reasonable moral certainty that the accused defendant committed the offense charged against him. You are instructed that when the circumstances are sufficient, under the rule herein given you, they are competent and are to be regarded by the jury as competent evidence for your guidance as direct evidence."

In the second phase of the trial the Court charged the jury in Instruction No. 2 as follows:

"To this second portion of the charge, the bill of particulars, the defendant has entered a plea of not guilty, which casts on the State the burden of proving the material allegations in said bill of particulars to your satisfaction and beyond a reasonable doubt.

"This portion, the bill of particulars, is simply the charge upon which the State seeks the death penalty, and sets forth in a formal way the statutory aggravating circumstance of which the defendant is accused, and it is in and of itself no evidence that any of such statutory aggravating circumstances are true and you should not allow yourselves to be influenced against the defendant by reason of the filing of such bill of particulars.

"The defendant is presumed to be innocent of the charge made against him in said bill of particulars, and innocent of each and every material element of said charge, and this presumption of innocence continues until such time as his guilt thereof is shown to your satisfaction beyond a reasonable doubt, and if, upon a consideration of all the evidence, facts and circumstances in the case you entertain a reasonable doubt of the guilt of the defendant of the charge made against

him in said bill of particulars you must give him the benefit of that doubt.

"You instructed that the statutory aggravating circumstances are specifically enumerated in the statutes of this State. Statutory aggravating circumstances are those which increase the guilt or enormity of the offense or add to its injurious consequences. In this connection, you may only consider those statutory aggravating circumstances set out in these instructions."

Instruction No. 5 states:

"You are instructed that in the event you unanimously find that one or more of these aggravating circumstances existed beyond a reasonable doubt, then you would be authorized to consider imposing a sentence of death.

"If you do not unanimously find beyond a reasonable doubt one or more of the statutory aggravating circumstances existed then you would not be authorized to consider the penalty of death. In that event the sentence would be imprisonment for life.

"If you do unanimously find one or more of these aggravating circumstances existed beyond a reasonable doubt and you further find that such aggravating circumstance or circumstances is outweighed by the finding of one or more mitigating circumstances, the death penalty shall not be imposed. In that event the sentence would be imprisonment for life."

Instruction No. 6 states:

"You are instructed that mitigating circumstances are not specifically enumerated in the statutes of this State but the laws of this State set up certain minimum mitigating circumstances you shall follow as guidelines in determining which sentence you impose in this case. You shall consider any or all of these minimum mitigating circumstances which you find apply to the facts and circumstances of this case. You are not limited in your consideration to these minimum mitigating circumstances. You may consider any additional mitigating circumstances, if any, you find from the evidence in this case. What are and what are not additional mitigating circumstances is for you the jury to determine.

"The following are the minimum mitigating circumstances as provided by law and the jury may consider any that are applicable based on the evidence in the case.

"1. The evidence indicates that this defendant did not commit the actual specific act of murder and for such reason does not deserve the extreme penalty of death.

"2. The defendant has no significant history of prior violent criminal activity;

"3. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

"4. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act;

"5. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct;

"6. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor'

"7. The defendant acted under duress or under the domination of another person;

"8. At the time of the murder, the capacity of defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or intoxication;

"9. The age of the defendant at the time of the crime."

Instruction No. 9 states:

"You are instructed that the State has the burden of proving to your satisfaction, beyond a reasonable doubt, the existence of one or more statutory aggravating circumstances as set out in these instructions."

The instructions clearly require the jury to determine guilt beyond a reasonable doubt as well as the aggravating circumstances in

connection with the sentencing procedures for imposition of the death sentence in compliance with Winship and Jackson. A court supplied definition of "beyond a reasonable doubt" is not a requirement of due process, and petitioner's claim on this ground (D3) is denied.

Petitioner next contends in D4 that Oklahoma's death penalty statute is unconstitutional as it allows the death sentence to be based upon circumstantial evidence alone. He argues that "[i]n Oklahoma when a conviction rests on circumstantial evidence the facts proved must not only be consistent with and point to guilt, but they also must be inconsistent with innocence. Akins v. State, 162 P.2d 195 (Okla.Cr.1945);" that ". . . where the evidence relied upon for conviction is entirely circumstantial, the circumstances tending to show guilt must be consistent with each other and point so strongly to the defendant's guilt as to exclude every other reasonable hypothesis except that of guilt. Plumley v. State, 100 P.2d 299 (Okla.Cr.1940);" and that "[f]acts which permit an inference consistent with innocence are insufficient to sustain a conviction. Jackson v. State, 403 P.2d 519 (Okla.Cr.1965)." (petitioner's brief at 23)

Neither Akins, Plumley or Jackson support petitioner's claim that "Oklahoma's Capital Murder Statute" is unconstitutional as it allows the death sentence to be based upon circumstantial evidence alone." In Akins, the defendant and one other person were charged jointly and convicted of the crime of unlawful possession of intoxicating liquor. In vacating the judgment and sentence, the Oklahoma Court of Criminal Appeals stated:

> "There is not a line of testimony to connect the defendant with the possession of the

liquor found by the officers. There was no evidence of any connection between the defendant and [defendant] Myrtle Leverett. The evidence did not even show that the defendant had leased the premises to her.

"The general rule in criminal cases is that where the evidence is circumstantial, the facts shown must not only be consistent with and point to the guilt of the defendant, but must be inconsistent with his innocence. (citations omitted)

Under the facts presented, there was no evidence to sustain the conviction of this defendant. If he could be convicted upon this testimony, it would be dangerous for anyone owning property to lease the same to any individual who might without the knowledge of the owner place intoxicating liquor thereon." 162 P.2d at 196.

In Plumley, the court found "from the record that the sole ground upon which the case was submitted to the jury was that the defendant hauled the animal in question with the man who claimed to be the owner, to Ardmore, and this man became a fugitive from justice and was never apprehended." 100 P.2d at 301. The court further found that "[t]here is no testimony in the record which by circumstance or otherwise connects the defendant with the taking of the animal from the possession of the owner." Ibid. The court further stated:

"It is unquestionably the law that crime may be established by circumstantial evidence, otherwise society would be at the mercy of the criminal class, but it is also uniformly held that the circumstantial evidence must go beyond mere suspicion and conjecture, and where circumstantial evidence solely is relied on for a conviction, the circumstances tending to show guilt must be consistent, the one with the other, and point so strongly to the guilt of the defendant, as to exclude every other reasonable hypothesis except that of guilt."

The defendant in Jackson was charged with Second Degree Burglary, after a former conviction of a felony. The Court found that the

defendant was convicted on circumstantial evidence which failed to place him at the scene of the crime when it was committed; that the extent of the proof against the defendant was that he was arrested in the company of another defendant, Coursey, who had been seen at the scene of the burglary; that the defendant and Coursey were acquainted with each other and had been seen together at another location prior to the occurrence of the burglary; that none of the witnesses could actually place the defendant at the scene of the crime except by this series of circumstances, which the court found to be insufficient to support a conviction. The court held:

> "Where the evidence is wholly circumstantial, and the facts and circumstances in evidence are of such a character as to fairly permit an inference consistent with innocence, it cannot be regarded as evidence sufficient to support a conviction." Id. at 520.

In Holland the Supreme Court stated:

> "Circumstantial evidence . . . is intrinsically no different from testimonial evidence. Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt, we can require no more." 348 U.S. at 140.

In that case the trial judge refused "to instruct that where the Government's evidence is circumstantial it must be such as to exclude every reasonable hypothesis other than that of guilt." Id. at 139. The Court noted that "[t]here is some support for this type of instruction in the lower court decisions, . . . but the better rule is

that where the jury is properly instructed on the standards for reasonable doubt, such an additional instruction on circumstantial evidence is confusing and incorrect . . ." Id. at 139, 140.

In Frady v. United States, 348 F.2d 84 (D.C.Cir.1965) the court cited the Holland decision and further stated:

> "* * * The ultimate test for the jury in a criminal case, however, is whether the defendant has been proved guilty beyond a reasonable doubt. This applies whether the evidence relied on for conviction is direct or circumstantial, or both. * * *" Id. at 106

In People v. Anderson, 447 P.2d 942 the defendant was convicted of first degree murder in a California state court case. The court held that:

> "Although premeditation and deliberation may be shown by circumstantial evidence . . . the People bear the burden of establishing beyond a reasonable doubt that the killing was the result of premeditation and deliberation, and that therefore the killing was first, rather than second, degree murder." Id. at 947.

The court further said:

> "[W]e must determine in any case of circumstantial evidence whether the proof is such as will furnish a reasonable foundation for an inference of premeditation and deliberation . . . or whether it 'leaves only to conjecture and surmise the conclusion that defendant either arrived at or carried out the intention to kill as the result of a concurrence of deliberation and premeditation.' (Italics added.)" Id. at 948.

See also People of Terr. of Guam v. Atiogue, 508 F.2d 680 (9thCir. 1974)

In Rudd v. State, 649 P.2d 791, 794 (1982) the Oklahoma Court of Criminal Appeals stated:

> "The standard of review in a criminal case based entirely on circumstantial evidence is whether the State's evidence tends to exclude every reasonable hypothesis other than guilt. However, the circumstantial evidence need not exclude every possibility other than guilt. White v. State, 607 P.2d 713 (Okl.Cr.App.1980). When implementing this standard, we must consider the evidence and its inferences in a light most favorable to the State. Renfro v. State, 607 P.2d 703 (Okl.Cr.App.1980)."

See also Atterberry v. State, 555 P.2d 1301, 1303 (Okl.Cr.1976) in which the court stated:

> "In any criminal proceeding, the State has the burden of producing sufficient evidence of the existence of each element beyond a reasonable doubt of the crime charged. The evidence of any element may be either direct or circumstantial, but so long as it is sufficient to establish the elements of the crime the burden has been met.
>
> "'By the very nature of things, some elements of an offense can be established only by circumstantial evidence, such as the defendant's knowledge or intent.' 1 Wharton's Criminal Evidence § 6 at 5 (1972)." (emphasis added)

In his brief, petitioner also argues:

> "Enmund v. Florida, supra., requires that before the death penalty can be imposed a specific finding must have been made that the accused was the perpetrator or had knowledge or intent that a homicide was going to occur. Enmund, supra., also requires that the jury focus on the individual defendants culpability, not others involved in the case, because the consitution insists on 'individualized consideration as a constitutional requirement in imposing the death sentence.' Lockett v. Ohio, supra, at 605. Thus a defendant's punishment must be 'tailored to his personal responsibility and moral guilt.' Enmund, supra., 102 S.Ct. at 3378." (petitioner's brief at 24)

Petitioner further argues that "in light of the constitutionally mandated requirement that the sentencing body find a specific homi-

cidal intent, the circumstantial evidence rule must also be applicable to the sentencing portion of a capital murder case." Ibid.

In view of the court's discussion of Enmund in connection with petitioner's claim under A herein, no further consideration of Enmund is necessary with respect to petitioner's "circumstantial evidence" claim (D4). The imposition of the death penalty as to petitioner was in accordance with proper instructions of the Court pursuant to the provisions of the Oklahoma death penalty statute and in compliance with the law as set forth in Gregg and its progeny.

In a recent decision of the United States Supreme Court in Zant v. Stephens, ____ U.S. ____, 51 LW 4891 (June 22, 1983), the Supreme Court had, once again, a case involving the sentencing procedures of the Georgia death penalty statute. The court stated:

> "Two themes have been reiterated in our opinions discussing the procedures required by the Constitution in capital sentencing determinations. On the one hand, as the general comments in the Gregg plurality opinion indicated, 328 U.S., at 192-195, and as The Chief Justice explicitly noted in Lockett v. Ohio, 438 U.S. 586, 605 (1978) (plurality opinion) there can be 'no perfect procedure for deciding in which cases governmental authority should be used to impose death.' See also Beck v. Alabama, 447 U.S. 625, 638, n. 13 (1980). On the other hand, because there is a qualitative difference between death and any other permissible form of punishment, 'there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.' Woodson v. North Carolina, supra, 428 U.S. at 305. 'It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.' Gardner v. Florida, 430 U.S. 349, 358 (1977). Thus, although not every imperfection

> in the deliberative process is sufficient, even in a capital case, to set aside a state court judgment, the severity of the sentence mandates careful scrutiny in the review of any colorable claim of error."

In Zant, the defendant contended "that the death sentence was impaired because the Judge instructed the jury with regard to an invalid statutory aggravating circumstance, a 'substantial history of serious assaultive criminal convictions,' for these instructions may have affected the jury's deliberations." Ibid. After reviewing its earlier decisions beginning with Furman, the court refused to set aside the conviction and death sentence. The Supreme Court pointed out that what is important in the decision as to who will actually be sentenced to death "is an individualized determination on the basis of the character of the individual and the circumstances of the crime." (citing Eddings, Lockett, Gregg, Proffitt, Woodson and Roberts (Harry) v. Louisiana, 431 U.S. 633 (1977)) Id. at 4895.

This Court is satisfied after careful scrutiny of the record that the conviction and imposition of the death sentence in the instant case did not violate the rights of the petitioner under the Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

E.

IMPROPER EVIDENCE OF AGGRAVATING CIRCUMSTANCES WAS ALLOWED DURING THE FIRST STAGE OF PETITIONER'S TRIAL WHILE THE TRIAL COURT FAILED TO ALLOW THE PETITIONER TO PROPERLY PRESENT MITIGATING FACTORS DURING THE SECOND STAGE OF THE TRIAL.

In support of this claim, petitioner contends "that it was the clear intent of the State from the beginning of the trial to elicit evidence of aggravation in the first stage of the trial." (petitioner's brief at 26). Petitioner further argues that "[r]egardless of the good or bad faith of the State in presenting evidence of aggravation in the first stage of the trial, it clearly thwarted the purpose of the statute, greatly prejudiced the petitioner, and violated the constitutional mandate of Gregg, supra," that the proceeding be bifurcated in order to determine guilt and punishment in separate proceedings. (petitioner's brief at 26)

In its opinion in Chaney, in addressing this issue, the Court of Criminal Appeals pointed out that the defendant had at one point in the proceedings "moved to have the two murder charges plus the two kidnapping charges consolidated for a single trial, but the motion was denied." 612 P.2d at 281.

The Court also noted that the defendant's motion in limine, asking that the State be prohibited from referring to the murder of Kathy Brown during the trial for the murder of Kendal Ashmore, was also denied. Ibid. The Court said that although "the prosecutor repeatedly stated his intention to delete all references to Ms. Brown from the State's presentation . . . the State did not live up to its promises." Ibid. The Court stated:

> "In his opening statement, the prosecutor told the jury that Mrs. Ashmore had an assistant who was also never seen again alive. Mr. Ashmore testified that Ms. Brown was with his wife and that he never saw either of them alive after the morning of the day that they were kidnapped. The jury listened to the tape recordings of the extortion calls, in which the caller threatened to do to Mrs. Ashmore what he had done to 'that honky that works for you.' The sheriff who testified to the uncovering of the graves told of the discovery of both bodies. During the sheriff's testimony, pictures of Ms. Brown's body were introduced. In overruling one of the defendant's objections, the trial court noted that the body in one of the photographs was not identifiable; but the clothing on that body does not at all match the clothing described and introduced as the clothing of Mrs. Ashmore." Ibid.

The Court found that "it would have been better to try these four cases together. ... The jury was told that it was trying the defendant for one murder, but then it was given evidence that there were in fact two murders and two kidnappings." Id. at 282

The Court held "that the trial court erred in denying the defendant's motion to consolidate and that the prosecutor should have consented to the consolidation." Ibid The Court further held "that the State is estopped from prosecuting the remaining murder charge and the two kidnapping charges pending against the defendant." Ibid.

The Court of Criminal Appeals also agreed with the defendant's contention "that the trial court committed error by allowing the State to present, during the first stage of the trial, evidence relating to the aggravating circumstances. Id. at 280. The Court held, however, that with respect to the improperly admitted evidence, "the error was

harmless;" that "[e]ven had the evidence not been admitted, the verdict of guilt unquestionably would have been the same;" and that [m]odification is not appropriate since it was proper to admit the evidence in the sentencing stage." Ibid.

This Court agrees with the ruling of the Court of Criminal Appeals on this issue that the error was harmless. As stated in Brinlee v. Crisp, 608 F.2d 839, 843 (10th Cir.1979):

> ". . . claims of state procedural or trial errors do not present federal questions cognizable in a federal habeas corpus suit. Bond v. State of Oklahoma, 546 F.2d 1369, 1377 (10th Cir.). However, a state prisoner is entitled to relief in a federal habeas suit if he demonstrates state court errors which deprived him of fundamental rights guaranteed by the Constitution of the United States. See Hickock v. Crouse, 334 F.2d 95, 100 (10th Cir.), cert. denied, 379 U.S. 982; Mathis v. People of State of Colo., 425 F.2d 1165, 1166 (10th Cir.); see Snow v. State of Oklahoma, 489 F.2d 278 (10th Cir.)."

"State Court rulings on the admissibility of evidence may not be questioned in federal habeas proceedings unless they render the trial so fundamentally unfair as to constitute a denial of federal constitutional rights. Gillihan v. Rodriguez, 551 F.2d 1182, 1192-93 (10th Cir.), cert. denied 434 U.S. 835." Id. at 850. See also Donnelly v. DeChristoforo, 416 U. S. 637 (1974).

Petitioner further argues that "[n]ot only did the state improperly elicit evidence of aggravation in the first stage, but the Court denied the petitioner the opportunity to properly present evidence of mitigation in the sentencing portion of the trial." (petitioner's brief 27, 28). This claim is also based on trial errors with respect to state court rulings on the admissibility of evidence

and "may not be questioned in federal habeas proceedings unless they render the trial so fundamentally unfair as to constitute a denial of federal constitutional rights." 434 U.S. at 850.

Petitioner complains that he "attempted to place testimony before the sentencing jury that one (1) month prior to the kidnapping the petitioner had performed an act of herosim by pulling a truck driver from a burning cab;" that "the court disallowed that testimony but, upon reflection, after the two (2) out-of-state witnesses had left the jurisdiction, allowed the Petitioner to present that evidence by way of stipulation to the jury." (petitioner's brief at 28) Petitioner also complains that "the court denied the petitioner's proffered testimony of Gary Livesay who was prepared to testify that several days before the kidnapping occurred Mr. Livesay, while an inmate at the Tulsa County Jail, had a discussion with another inmate relative to a kidnapping which was going to occur in Jenks perpetrated by elements of the Mafia." Ibid.

In response to petitioner's "act of heroism" evidence, the State points out that the record (Tr. 1264-66) reveals that such evidence was admitted into evidence by way of stipulation and further notes that although the trial court refused admission of the "act of heroism" evidence only during the first stage of the trial (Tr. 959-68), he offered to order those witnesses to return for the second stage, which offer was declined by the petitioner's attorney (Tr. 968). (State's brief filed herein on June 27, 1983, Page 32). The State also calls attention to the fact that petitioner was allowed to present all evidence of his reputation and character at the second stage of the proceeding. (Tr. 1264-66)

As to the proffered testimony of Gary Livesay, the Court of Criminal Appeals considered this issue in petitioner's direct appeal, Chaney, 612 P.2d at 278. The court stated:

> "The twelfth assignment of error pertains to the trial court's refusal to allow one of the defendant's witnesses [Gary Livesay] to testify. At an in camera hearing, the witness testified that he was in the county jail before the kidnapping occurred and that an inmate, whom he did not know and could not name, told him the Mafia had planned a kidnapping which would occur soon in Jenks, Oklahoma. The inmate said that his brother was implicated in the crime. The witness did not know the defendant until they met in jail a few days before the defendant's trial; and when he discovered what the defendant was accused of doing he told the defendant what he had heard.
>
> "After the in camera hearing, the trial judge ruled that the testimony was inadmissible hearsay."

Petitioner argues "that the most eggregious violation of his constitutional rights which occurred at his trial was the denial of the right to present evidence of mitigation in an attempt to receive a sentence less than death;" that "[d]isallowing the testimony of Gary Livesay clearly prevented the jury from hearing evidence that another individual had knowledge of a crime which was going to occur in the future with striking similarities if not identities with the facts of the instant case." (petitioner's brief at 28).

Petitioner contends that under Green v. Georgia, 442 U.S. 93 (1979), hearsay should not be excluded in the punishment phase of the trial. Petitioner also cites Chambers v. Mississippi, 410 U.S. 284 (1973) for the proposition that the "hearsay rule may not be applied

mechanistically to defeat the ends of justice." (petitioner's brief at 29)

The Rules of Evidence with respect to hearsay may be relaxed during the sentencing procedures. However, the trial court's rulings as to evidence offered during the sentencing proceedings are trial errors which "may not be questioned in federal habeas proceedings unless they render the trial so fundamentally unfair as to constitute a denial of federal constitutional rights." Brinlee v. Crisp, 608 F.2d at 850.

Petitioner has not demonstrated that the state court rulings on the admissibility of evidence rendered his trial so fundamentally unfair as to deprive him of fundamental rights guaranteed by the Constitution of the United States, and his claim on this issue is without merit.

Petitioner's "Brady" claims raised in D4 and E have been discussed in B herein and need not be addressed further in connection with the sentencing phase of the trial.

This Court is satisfied that the impact on the jury with respect to error in the admission of evidence as discussed herein was not so egregious as to deprive petitioner of "fundamental rights guaranteed by the Constitution of the United States." Id. at 843. Therefore petitioner's claim E is denied.

F.

ILLEGALLY SEIZED EVIDENCE GAINED FROM AN UNLAWFUL SEARCH WAS ADMITTED AGAINST PETITIONER[23]

The petitioner was arrested at approximately 3:20 a.m., on March 19, 1977 at his trailer home in Jenks, Oklahoma. The arresting officers did not obtain a search warrant prior to arresting petitioner and searching his trailer home. During the search of the trailer home, officers found a torn note in petitioner's wastepaper basket[24] which, when pieced together, noted 1 p.m., Thursday, the Ashmore telephone number, the name "Richard Elloit," (sic) and the number "9148."[25] This note matched a note in the victim's truck reflecting the words, "1:00 Thur.", "91st & Memorial", "Richard Eliot", and the numbers, "581-3106" and "352".[26]

Prior to petitioner's arrest, law enforcement officials had traced the second extortion telephone call made on March 18, 1977 at 6:53 p.m. to Chaney's telephone located at his trailer home.[27] The third extortion telephone call made on March 18, 1977 at 9:27 p.m. had been traced to a pay telephone booth

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23 This issue was raised on direct appeal as an assignment of error to the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction in Chaney v. State, 612 P.2d 269 (Okl.Crim.App. 1980). The United States Supreme Court subsequently denied certiorari, Chaney v. Oklahoma, 450 U.S. 1025 (1981).

24 State's exhibit 18/30.

25 Trial transcript at pages 535, 579.

26 Trial transcript at pages 468-71, State's Exhibit No. 12.

27 Trial transcript at pages 411-12, 419.

located at 61st and Yale in Tulsa, Oklahoma approximately six miles from petitioner's trailer home in Jenks, Oklahoma.[28] The telephone booth was processed for latent prints at 12:30 a.m. on March 19, 1977. A palm print found on the telephone receiver three hours after the call was placed was identified as that of petitioner.[29] Petitioner was arrested approximately three hours thereafter at his trailer home in Jenks, Oklahoma.

The seminal authority in this area is the case of Stone v. Powell, 428 U.S. 465 (1976). In Stone, the defendant charged with murder in state court claimed a violation of his Fourth Amendment rights because testimony concerning a revolver found on his person during an allegedly illegal arrest should have been excluded. The Supreme Court concluded "that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." Stone at 494. Petitioner attempts to avoid the effect of Stone, a noncapital case, by claiming it has no applicability to a capital case. The court finds no merit in petitioner's argument.

Under Stone, this Court must determine whether the state provided petitioner an opportunity for full and fair litigation

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28 Trial transcript at page 425.

29 Trial transcript at page 438.

of his illegal search and seizure claim. If not, petitioner's claim is cognizable in this habeas proceeding.[30]

On April 1, 1977, petitioner's attorney filed a motion to suppress all evidence obtained as a result of petitioner's arrest, claiming the petitioner's arrest violated the Fourth and Fourteenth Amendments. On April 11, 1977, in the trial court, a preliminary hearing was held at which petitioner's attorney objected to the introduction of State's exhibits 7 and 8 (the torn note parts) as being the fruits of an illegal search made without a search warrant. In response to attorney Smallwood's objection and argument, Tulsa County Special District Judge Earl Truesdell found the officers were faced with an exigent situation coupled with probable cause justifying a warrantless search. Petitioner's motion to suppress was overruled.[31]

Further, on September 8, 1977, during the course of petitioner's trial, a hearing out of the presence of the jury was conducted before Tulsa County District Judge Jay Dalton on the search and seizure issue. Petitioner called as witnesses the officers who participated in the arrest of petitioner. At the close of the testimony, petitioner again moved for suppression by the Court of the evidence obtained pursuant to the search of peti-

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30 If cognizable in this habeas proceeding, this Court is required to afford petitioner an evidentiary hearing pursuant to 28 U.S.C. §2254(d). On June 23, 1983, this Court found it was not required to have an evidentiary hearing on the search and seizure issue, thus implicitly finding no merit in petitioner's illegal search and seizure argument.

31 Transcript of the preliminary hearing held April 11 and 12, 1977 at pages 172-73.

tioner's trailer home. Mr. Fallis on behalf of the State responded to petitioner's motion. Judge Dalton overruled petitioner's objection and motion.[32]

Petitioner directly appealed the guilty verdict rendered by the jury at the conclusion of the trial to the Oklahoma Court of Criminal Appeals. Included as an assignment of error was the proposition that the trial court erred in admitting the evidence obtained pursuant to the allegedly illegal search and seizure subsequent to petitioner's arrest. The Oklahoma Court of Criminal Appeals found the police officers were justified in conducting a warrantless search for the victims and found the assignment of error without merit. Chaney v. State, 612 P.2d 269, 277 (Okl. Crim.App. 1980).[33]

On June 23, 1983, this Court denied petitioner's request for an evidentiary hearing pursuant to 28 U.S.C. §2254(d) on the search and seizure issue.

The "opportunity for full and fair litigation" of petitioner's search and seizure claim includes, but is not limited to, the procedural opportunity to raise or otherwise present a Fourth Amendment claim. It includes a full and fair hearing. Gamble v. State of Oklahoma, 583 F.2d 1161, 1165 (10th Cir. 1978); Sanders v. Oliver, 611 F.2d 804, 808 (10th Cir. 1978), cert. denied, 449

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32 The September 8, 1977 in camera hearing testimony begins at page 501 of the trial transcript. Attorney Smallwood's motion and argument, Fallis' response and Judge Dalton's ruling are found at pages 546-549.

33 Petitioner's petition for writ of certiorari to the United States Supreme Court was subsequently denied, Chaney v. Oklahoma, 450 U.S. 1025 (1981).

U.S. 827 (1980); McDaniel v. State of Oklahoma, 582 F.2d 1242, 1244 (10th Cir. 1978), cert. denied, 439 U.S. 969 (1978).

Petitioner's motion to suppress was first addressed at preliminary hearing. Subsequently, an in camera hearing at which petitioner's counsel called witnesses was held by the trial court. The trial court's decision on the merits overruling the motion to suppress was affirmed on appeal by the Court of Criminal Appeals. Under Stone v. Powell, supra, this lays the matter to rest.

Assuming arguendo petitioner did not receive an "opportunity for full and fair litigation" in the state court, this Court concludes the evidence obtained pursuant to the search of petitioner's trailer home incident to petitioner's arrest was lawfully obtained.

Every search and seizure made without a search warrant is per se unreasonable under the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971); Norton v. State, 501 P.2d 877, 879 (Okl.Crim.App. 1972). One established exception to this general rule is that of "exigent circumstances," -- a situation in which it is not feasible for law enforcement officials to take the time required to secure a search warrant, thus allowing the officials to substitute their judgment for that of a neutral and detached magistrate concerning the existence of probable cause to search. Coolidge v. New Hampshire, supra. However, the exigent circumstances must be coupled with probable cause to enable an officer to legitimately make a search without a warrant. Chambers v. Maroney, 399 U.S. 42, 51-52 (1970); Whitehead v.

State, 546 P.2d 273, 275 (Okl.Crim.App. 1976). In the matter at hand, law enforcement officials were faced with exigent circumstances -- two missing women or their whereabouts whose lives had been threatened by extortion telephone calls were the subject of the search. Moreover, law enforcement officials had probable cause to believe petitioner was the person placing the telephone calls. The Court concludes the law enforcement officials lawfully arrested petitioner and the search of petitioner's trailer home incident to petitioner's arrest was also lawful.

G.

THE TRIAL COURT FAILED TO CHANGE VENUE OF THE TRIAL AFTER ADVERSE PRE-TRIAL PUBLICITY WHICH MADE A FAIR TRIAL IN TULSA COUNTY, OKLAHOMA IMPOSSIBLE.[34]

Petitioner claims he was unconstitutionally denied a fair trial on both the issue of guilt or innocence and the issue of sentence by an impartial jury in violation of the Sixth and Fourteenth Amendments as a result of the trial court's denial of petitioner's pretrial motion for change of venue.

A motion for change of venue was filed by petitioner on April 21, 1977 pursuant to 21 Okl.St.Ann. §561. The motion was supported by affidavits; affidavits on behalf of the State of Oklahoma were filed in response thereto. The motion for change of venue was first argued on April 29, 1977 and petitioner offered testimony of two affiants to establish prejudice in the minds of Tulsa County inhabitants. The trial court reviewed the affidavits, viewed tapes of previous television news coverage and informed counsel he had read several newspaper articles with regard to the case.[35] At that time the trial judge tentatively overruled the motion for change of venue, informing the parties it was the court's intent to attempt to select a jury and, if upon the selection, it became apparent the jurors were prejudiced such that petitioner Chaney could not have a fair and impartial

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34 This issue was raised on direct appeal to the Oklahoma Court of Criminal Appeals which affirmed petitioner's conviction and sentencing, Chaney v. State, 612 P.2d 269 (Okl.Crim.App. 1980). The United States Supreme Court denied certiorari, Chaney v. Oklahoma, 450 U.S. 1025 (1981).

35 Trial transcript at pages 38-39.

trial, reconsideration of the motion for change of venue would be in order.[36] The motion was again heard on September 6, 1977 at which time Judge Dalton said:[37]

> "THE COURT: That will be the order at this time, which is the same order I issued on a prior occasion. If during the course of the trial, or the selection of the jury, it appears we are unable to select a jury, it appears we are unable to select a jury that would be fair and impartial out of Tulsa county, in that event, I would reconsider."

Thereupon, Judge Dalton proceeded to conduct voir dire of the jurors. At the close of voir dire on September 7, 1977, petitioner's attorney again urged the motion for change of venue and introduced into evidence Defendant's Exhibits 1 through 7.[38] The trial judge again overruled the motion for change of venue, saying, "I made the statement that I would reconsider it at the time of trial if I felt we couldn't select a jury because of the publicity. Since we have selected the jury I think the issue would be moot as far as that, and your objection will be preserved."[39]

On direct appeal to the Oklahoma Court of Criminal Appeals, petitioner urged that the trial court erred in failing to sustain the motion for change of venue. Petitioner's proposition was

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36 Trial transcript at pages 34 and 41-42.

37 Trial transcript at page 71.

38 Trial transcript at 317. Exhibit 1 is a KTEW film; Exhibit 2 is a KTUL newsreel; Exhibit 3 is a KTEW cassette; Exhibit 4 is a KOTV cassette; Exhibit 5 is a KOTV news cassette; Exhibit 6 is copies of television coverage (local television coverage); and Exhibit 7 is newspaper coverage.

39 Trial transcript at 317-18.

addressed by the Court of Criminal Appeals in its reported opinion, Chaney v. State, 612 P.2d 269 (Okl. Crim.App. 1980). The Court of Criminal Appeals said:

> "The fourth assignment of error is concerned with the trial court's denial of the defendant's motion for a change of venue. Such motions are directed to the trial court's sound discretion -- and we do not find any abuse of that discretion in this case. The record makes clear that the judge was sensitive to the publicity problem: Although he denied the defendant's motion, he said that he would reconsider it if jury selection became difficult. But no juror expressed any preconceptions as to the defendant's guilt, and the defendant was given wide latitude during the voir dire." (Citations omitted) Chaney at 275.

Petitioner's petition for writ of certiorari to the United States Supreme Court was subsequently denied, Chaney v. Oklahoma, 450 U.S. 1025 (1981).

The Sixth Amendment guarantees trial by an impartial jury in federal criminal prosecutions. The Due Process Clause of the Fourteenth Amendment guarantees the same right in state criminal prosecutions. Duncan v. Louisiana, 391 U.S. 145, 149 (1968). In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, "indifferent" jurors. Irvin v. Dowd, 366 U.S. 717, 722 (1961); Brinlee v. Crisp, 608 F.2d 839, 844 (10th Cir. 1979), cert. denied, 444 U.S. 1047 (1980). In certain instances, undue pretrial publicity may impair the impartiality of the jury verdict.[40] However, as

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40 See Irvin v. Dowd, 366 U.S. 717 (1961); Rideau v. Louisiana, 373 U.S. 723 (1963); Estes v. Texas, 381 U.S. 532 (1965); and Sheppard v. Maxwell, 384 U.S. 333 (1966).

stated by the Supreme Court in Nebraska Press Assn. v. Stuart, 427 U.S. 539, 554-55 (1976):

> "[P]retrial publicity -- even pervasive, adverse publicity -- does not inevitably lead to an unfair trial. The capacity of the jury eventually impaneled to decide the case fairly is influenced by the tone and extent of the publicity, which is in part, and often in large part, shaped by what attorneys, police, and other officials do to precipitate news coverage. The trial judge has a major responsibility....[t]he measures a judge takes or fails to take to mitigate the effects of pretrial publicity...may well determine whether the defendant receives a trial consistent with the requirements of due process."

Considerable Oklahoma case law has developed around the change of venue statute found at 21 Okl.St.Ann. §561. Clearly, the granting of a change of venue is within the sound discretion of the trial judge whose ruling will not be disturbed upon appeal absent an abuse of discretion. Frye v. State, 606 P.2d 599, 602 (Okl.Crim.App. 1980); Andrews v. State, 555 P.2d 1079, 1083 (Okl.Crim.App. 1976); Prichard v. State, 539 P.2d 392, 393 (Okl. Crim.App. 1975); Sam v. State, 510 P.2d 978, 981 (Okl.Crim.App. 1973); Garcia v. State, 501 P.2d 1128, 1134 (Okl.Crim.App. 1972); and Fesmire v. State, 456 P.2d 573, 584 (Okl.Crim.App. 1969), vacated in part on other grounds, 408 U.S. 935 (1972). Whether the refusal of the trial court to grant an application for change of venue constituted an abuse of discretion depends upon whether the defendant was prevented from receiving a fair trial by an impartial jury. Andrews v. State, 555 P.2d 1079, 1083 (Okl.Crim. App. 1976); Russell v. State, 528 P.2d 336, 340 (Okl.Crim.App.

1974). Moreover, when considering a motion for change of venue the presumption is that a defendant can receive a fair and impartial trial in the county in which the offense was committed. Hammons v. State, 560 P.2d 1024, 1029 (Okl.Crim.App. 1977). The presumption is rebuttable with the burden of persuasion on the defendant. Frye v. State, 91 Okl.Cr. 326, 218 P.2d 643, 650 (Okl.Crim.App. 1950). But a mere showing that pretrial publicity was adverse to the defendant does not rebut the presumption. Shapard v. State, 437 P.2d 565, 578 (Okl.Crim.App. 1967). The defendant must show by clear and convincing evidence that jurors were specifically exposed to the publicity and that he was prejudiced thereby. Tomlinson v. State, 554 P.2d 798, 804 (Okl.Crim. App. 1976). Finally, where there has been "widespread adverse pretrial publicity" about the defendant, the proper procedure to determine whether defendant can receive a fair trial is to proceed to trial and to determine on voir dire whether a fair and impartial jury can be selected. Rowbotham v. State, 542 P.2d 610, 615 (Okl.Crim.App. 1975); Shapard v. State, 437 P.2d 565, 578 (Okl.Crim.App. 1967).

Upon review of the trial court's denial of the motion for change of venue, this Court finds there was no abuse of discretion. The trial judge was especially sensitive about the pretrial publicity surrounding defendant and reiterated he would reconsider his decision to overrule the motion if, after conducting voir dire, he was convinced the jurors were unduly prejudiced. Further, as pointed out by the Court of Criminal Appeals in

Chaney v. State, 612 P.2d 269, 275 (Okl.Crim.App. 1980), counsel were permitted wide latitude during voir dire. As stated in Swift v. State, 530 P.2d 562, 564 (Okl.Crim.App. 1974), a court cannot require that a prospective juror not read articles or see reports of a case in the news media. "It is sufficient that a juror can lay aside his opinion, if any, and render a verdict based on the evidence presented to him in court."[41]

Based on the above, this Court concludes the failure of the trial court to grant the motion for change of venue did not result in an unfair trial to the defendant. Thus, petitioner was not tried and sentenced in violation of the Sixth and Fourteenth Amendments.

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41 The Supreme Court emphasized in Irvin v. Dowd, supra, at 722-23:

> "It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. (Citations omitted).

IT IS THEREFORE ORDERED petitioner Larry Leon Chaney's application for writ of habeas corpus is denied. The order of temporary stay of execution of petitioner's death warrant, to and including Monday, July 25, 1983, entered the 17th day of June, 1983 will remain in effect until altered or extended by proper authority.

ENTERED this 30th day of June, 1983.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC.)
)
Plaintiff,)
)
v.) CA No. 83-C-5
)
THRIFT CARS, INC.)
)
Defendant.)

ORDER

The parties having stipulated and agreed to transfer the above action to the U. S. District Court for the District of Massachusetts,

IT IS HEREBY ORDERED that the above action be transferred to the U. S. District Court for the District of Massachusetts.

Dated this 29th day of June, 1983.

H. Dale Cook
Chief Judge, United States
District Court for the
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WASTE MANAGEMENT, INC., a Delaware corporation, Plaintiff,	)	
vs.	)	No. 81-C-870-E
ROBERT E. SPARKS, Defendant.	)	

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 30th day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL WM. POLIN and MARSHA POLIN,	)	
Plaintiffs,	)	
vs.	)	No. 70-C-36-C
DUN & BRADSTREET, INC., a Delaware corporation,	)	
Defendant.	)	

ORDER

This case is before the Court pursuant to the Mandate of the United States Court of Appeals for the Tenth Circuit. Plaintiffs are represented by Don E. Gasaway and defendant appears by Arthur E. Rubin and John Kinslow.

Plaintiffs' Third Amended and Supplemental Complaint alleges an invasion of claimed common law and constitutional rights of privacy and alleges violations of two sections of the Oklahoma Credit Ratings Act, OKLA.STAT.ANN. tit.24, §§81 and 82. In 1977, upon the request of the parties, Judge Allen E. Barrow referred the case to a Special Master, Royce H. Savage, former Judge for the United States District Court for the Northern District of Oklahoma. After numerous conferences, pleadings, discovery and briefing, the Special Master, on June 7, 1978, entered his Order sustaining defendant's Motion for Summary Judgment with respect to both counts in the complaint. On the same day Judge Barrow

entered judgment "in conformity with the Order" entered by the Special Master. Appeal was taken to the United States Court of Appeals for the Tenth Circuit. After rehearing en banc the Court of Appeals rendered its decision on December 3, 1980. Polin v. Dun & Bradstreet, Inc., 634 F.2d 1319 (10th Cir. 1980). The Court of Appeals directed as follows:

> This case is remanded to the District Court for review of the Special Master's report in accordance with Rule 53(e)(4). The decision whether summary judgment was proper should be made in the first instance by the trial judge after he has reviewed the legal conclusions reached by the Special Master.

The Court has considered Rule 53(e)(4) which provides as follows:

> Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

Pursuant to the direction of the Court of Appeals and in conformity with Rule 53(e)(4) this Court has reviewed the conclusions of law reached by the Special Master. The Court has also reviewed the facts found by the Special Master and the Court has reviewed these findings of fact and conclusions of law in the context of and together with an independent review by this Court of the pleadings filed in this case, the answers to interrogatories, the stipulations of the parties, the depositions filed herein and the briefs, statements and arguments of counsel. This Court set this matter for hearing on May 26, 1981 and at that hearing provided the parties an opportunity to file briefs

in connection with the mandate of the Court of Appeals and in connection with defendant's Motion for Summary Judgment and the Special Master's rulings thereon. Defendant filed its brief on July 27, 1981. Plaintiffs have filed no brief herein and, at a hearing held in this matter on April 14, 1982, Mr. Gasaway, the only counsel remaining in the case for plaintiffs, announced that he had decided not to file a brief and asked the Court to proceed on the basis of a review of defendant's brief alone.

After careful and independent analysis and review of the pleadings, discovery, arguments, and briefs filed herein and of the Special Master's findings of fact and conclusions of law and after examination of the authorities, this Court finds that the findings of the Special Master are correct; that the Special Master's conclusions of law are sufficient to support the grant of summary judgment in this case in favor of the defendant; and that summary judgment should, accordingly, be entered in favor of the defendant and against the plaintiffs with respect to each and every claim in the complaint as amended.

In particular, this Court finds that the defendant is entitled to judgment for the reason that the facts found by the Special Master do not as a matter of law constitute an invasion of privacy and do not as a matter of law constitute a violation of §§81 and 82 of the Oklahoma Credit Reporting Act that would allow any monetary recovery to the plaintiffs herein.

The Court concludes that, while a tort based upon invasion of privacy is recognized in Oklahoma, McCormack v. Oklahoma Publishing Co., 613 P.2d 737 (Okl.1980), Munley v. I.S.C.

Financial House, Inc., 584 P.2d 1336 (Okl.1978), that Oklahoma law requires both "publicity" and, at least, as to the reports at issue, that those reports conveyed a false impression of the plaintiffs with respect to any action based on the tort of false light invasion of privacy. The facts admitted by plaintiffs and as found by the Special Master herein establish that there was no "publicity". Peacock v. Retail Credit Co., 302 F.Supp. 418 (D.C.Ga. 1969), aff'd 429 F.2d 31, cert. den. 401 U.S. 938, 28 L.Ed.2d 217, reh. den. 402 U.S. 925, 28 L.Ed.2d 664.

In this regard, this Court concludes that the courts of the State of Oklahoma have adopted the definition of "publicity" contained in the Restatement. That definition differs from the definition of "publication" generally used in connection with the tort of defamation. See Restatement of Torts 2d §652D, comment a. Comment a reads in part:

> 'Publication,' ... is a word of art, which includes any communication by the defendant to a third person. 'Publicity,' on the other hand, means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication, which may be oral, written or by any other means. It is one of a communication that reaches, or is sure to reach, the public.

In the present action, the Special Master found that the November 11, 1966 report was distributed to eight (8) of defendant's subscribers; the January 16, 1968 report to seven (7) of defendant's subscribers' and the February 12, 1969 report to two (2) of its subscribers. All three reports were distributed

pursuant to defendant's standard subscription agreement, which specifically prohibited reproduction or accessibility to anyone other than the subscriber. The Special Master so found and it is undisputed that plaintiffs cannot prove "publicity" in this action. Plaintiffs admit that the reports were distributed as set out above and to no one else. See Plaintiffs' Motion To Special Master To Reconsider Pre-Trial Order filed June 7, 1978. In that the record in this case conclusively shows that the plaintiffs cannot prove the essential element of "publicity" in regard to Count I of the Third Amended and Supplemental Complaint, this Court need not reach a determination as to the correctness of the conclusions of the Special Master on the other elements related to false light invasion of privacy. The plaintiffs cannot prove "publicity" and, therefore, have no cause of action for false light invasion of privacy under the law of Oklahoma.

The Court further concludes that there is no constitutional right of privacy giving rise to a cause of action for damages against a private defendant. The United States Constitution, in the situation as presented in this case, would only come into play if the alleged invasion of plaintiffs' privacy was at the hands of some governmental official or actor, either at the local, state or federal level. Such is not the situation here.

Finally, with respect to the asserted common law invasion of privacy claim, the Court concludes that Oklahoma law does not require a credit or financial information reporting entity to obtain the consent of an investigated party prior to distribution

of reports on such party and further concludes that plaintiffs have no legal right to prevent the distribution of such reports about themselves.

With respect to plaintiffs' claim asserted under OKLA.STAT.ANN. tit.24, §§81 and 82, the Court concludes that, under the Oklahoma cases, the statutory scheme "is to protect the individual from injury to his financial or credit standing resulting from false or misleading ratings and written opinions." Derryberry v. Retail Credit Co., 550 P.2d 942, 945 (Okl.1976).

The Court further concludes that the Oklahoma Credit Ratings Act contemplates monetary recovery only when a reporting entity "[K]nowingly promulgates or publishes a false opinion or statement in any book or list as to the credit or financial standing of any person . . . ." OKLA.STAT.ANN. tit.24, §83. Plaintiffs have not asserted a violation of this section in their Third Amended and Supplemental Complaint and are not entitled to recover damages from defendant under the Credit Ratings Act. This Court cannot manufacture a cause of action for the plaintiffs when one has not been raised.

Furthermore, the Oklahoma cases have held that violation of a statute creates a cause of action only where (1) the injury complained of is the proximate result of the violation, (2) the person injured is a member of a class intended to be protected by the statute, (3) the injury is of a kind the statute was intended to prevent, and (4) there is evidence of an injury suffered by the plaintiff. Woodard v. Kinchen, 446 P.2d 375 (Okl.1968); Pepsi-Cola v. Von Brady, 386 P.2d 993 (Okl.1963); Elam v. Loyd,

204 P.2d 280 (Okl.1949); and, Champlin Refining Co. v. Cooper, 86 P.2d 61 (Okl.1938).

In each of these cases, the Oklahoma Supreme Court held that a plaintiff must bring himself within the general purposes of the statute before he can recover for an alleged violation of the statute. The Woodward case also holds, as a matter of law, that proximate cause is lacking where there is no causal connection between the alleged violation of the statute and the injury alleged. In the present case, plaintiffs have failed to allege or show any causal connection between the alleged violation of the statute and their alleged injuries.

Consequently, the Special Master correctly concluded that the plaintiffs must do more than prove a technical violation of §81 and §82 to recover monetary damages in this action. They must also prove the reports were false or that they created a false impression concerning the plaintiffs, there was injury suffered by them as a proximate result of the violations alleged, that defendant acted with knowledge as to the false or misleading character of the reports and that the false opinion or statement was contained in a book or list. See §83 and Polin v. Retail Credit Co., 469 P.2d 1004 (Okla.1970). The record before this Court conclusively shows that the plaintiffs cannot prove all of these elements. In fact, as mentioned previously, the plaintiffs do not allege a violation of §83.

To recover for common law false light invasion of privacy, plaintiffs must be able to show not only that the report casts them in a false light but also that it was disseminated to the

public rather than a few parties. The facts as claimed by plaintiffs reveal that under Oklahoma law no dissemination to the public is involved in this action. Likewise, the claim for violation of the Oklahoma Credit Ratings Act must fail because to recover monetary damages under that Act the plaintiffs must bring themselves under the protection afforded by §83. The plaintiffs have not claimed a violation of §83 and, therefore, are not entitled to monetary damages for violations of §§ 81 and 82 alone.

The Court has carefully reviewed the record in this action and has determined that there are no genuine issues as to any material fact and that the defendant is entitled to summary judgment in this action as a matter of law.

It is so Ordered this 30th day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL WM. POLIN and
MARSHA POLIN,

Plaintiffs,

vs.

DUN & BRADSTREET, INC.,
a Delaware corporation,

Defendant.

No. 70-C-36-C

J U D G M E N T

This action having come before the Court and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing and that the action be dismissed on the merits.

It is so Ordered this 30th day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

F I L E D

JUN 30 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-113-C
RICHARD A. DELOZIER, Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Philard L. Rounds, Jr., Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 30th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, OK 74103
(918) 581-7463

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the _____ day of _____, 19__.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 82-CR-1-02
	)	No. 83-C-220-C
DEBORA LOUISE ADKINS LONG,	)	
	)	
Defendant.	)	

ORDER

Now before the Court for its consideration is the motion of Debora Louise Adkins, movant herein, to vacate, set aside or correct a sentence imposed by this Court on March 18, 1982. The motion is filed pursuant to 28 U.S.C. §2255. Ms. Adkins pled guilty to two counts of a nine-count indictment, all counts having charged violation of 18 U.S.C. §1708. Ms. Adkins was sentenced to five (5) years probation. The Judgment and Probation Order does not reflect any special conditions of probation, but at sentencing this Court informed Ms. Adkins that association with one of her co-defendants, Luther Ben Long, was prohibited. Furthermore, the general conditions of probation printed on the reverse side of the Judgment and Probation Order include a condition that Ms. Adkins associate only with law-abiding persons.

Mr. Long was convicted on all nine counts of the same indictment by a jury and this Court sentenced him to four (4)

years incarceration on Counts 1, 2 and 3 of the indictment, the sentence in Counts 2 and 3 to run concurrently with the sentence imposed in Count 1 and to four (4) years incarceration as to the remainder of the Counts, said terms to run concurrently with each other, but consecutively as to the terms imposed in Counts 1, 2 and 3. Mr. Long appealed these convictions to the United States Court of Appeals for the Tenth Circuit and his convictions were affirmed by the Court of Appeals. United States v. Long, 705 F.2d 1259, (10th Cir. 1983).

The motion of Ms. Adkins contends that a condition of probation which forbids association with Mr. Long is violative of the 1st, 5th, 8th and 14th Amendments to the United States Constitution. In her motion Ms. Adkins alleges that Mr. Long has been her husband for three years and that this marriage produced one son, Billy Joe Adkins Long. The Court first notes that the United States Probation Office files reflect that Ms. Adkins was legally married in Sapulpa, Oklahoma on November 17, 1977 to one William J. Adkins and that said marriage produced one son, Billy Joe Adkins. That marriage was dissolved by a Decree of Divorce granted to Ms. Adkins on September 29, 1981. Evidently, from letters received by the Probation Office, it is learned that Ms. Adkins views the relationship with Mr. Long as being one of common law marriage.

The Presentence Report in Ms. Adkins case contains the following pertinent information:

1. that Ms. Adkins met Mr. Long in July of 1981 and that he moved into the residence of Ms. Adkins' mother shortly

thereafter;

2. that Ms. Adkins lived with Mr. Long for approximately eight months at which time the instant charges were initiated;

3. that no children were born from the relationship of Ms. Adkins and Mr. Long; and

4. that Ms. Adkins had no prior record of involvement with law enforcement officials before her arrest on the charges in the instant case. The movant was, however, charged with carrying a concealed weapon in the District Court in and for Tulsa County, State of Oklahoma, on December 14, 1981. The state charge arose out of the same incident as the instant offenses.

After carefully reviewing both Ms. Adkins' and Mr. Long's probation files and researching the applicable law this Court has determined that the condition of the movant's probation that she associate only with law-abiding persons and, specifically, that association with her co-defendant, Mr. Long, is prohibited, does not violate any provision of the United States Constitution.

In the case of United States v. Lawson, 670 F.2d 923 (10th Cir. 1982) the United States Court of Appeals for the Tenth Circuit recognized that "[a] sentencing judge has broad discretion to impose conditions of probation that are reasonably related to protecting the public and rehabilitating the defendant. (emphasis added) Id at 929. The condition of Ms. Adkins' probation that she associate only with law-abiding persons and that association with Mr. Long, specifically, is prohibited is to further the penological goal of Ms. Adkins' rehabilitation and to enhance her opportunity to return to a life

as a law-abiding and productive member of society. Courts have not always reached identical results when faced with the question of whether prison inmates have a constitutional right to receive visits from family and friends. See Ramos v. Lamm, 639 F.2d 559, 579 (10th Cir. 1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981), and cases cited therein. If such a right does exist it is subject to restrictions upon lawful conviction and when the restriction is to serve a legitimate penological goal, such as rehabilitation or prison security. Procunies v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974); Lawson, supra at 929; See also Brisbon v. Lane, 554 F.Supp. 426 (N.D.Ill. 1983), and Walker v. Pate, 356 F.2d 502 (7th Cir. 1966), cert. denied 384 U.S. 966 (1966).

In the present case, it is clear now, as it was at the time of sentencing, that Ms. Adkins' problems in the criminal justice system began with her association with Mr. Long. The Court is of the view that further association with Mr. Long, who had at least six prior felony convictions at the time of his conviction in the instant case, would be wholly detrimental to Ms. Adkins' rehabilitation chances. The probation condition which restricts association with Mr. Long or other persons who are not law-abiding is sufficiently tailored to the rehabilitative process to withstand Constitutional attack in this instance under any of the Amendments cited by movant.

The Court would finally note that this Court has not limited visits between Mr. Long and Billy Joe Adkins. However, Billy Joe must be accompanied by someone other than Ms. Adkins during any

such visits. Ms. Adkins remains subject to the condition that she associate only with law-abiding persons and she is prohibited from association with Mr. Long.

It is therefore the Order of this Court that the motion of Debora Louise Adkins to vacate, set aside or correct her probationary sentence is denied.

It is so Ordered this 30th day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-301-E
STARLETTE M. OSBORN, et al., Defendants.	)	

O R D E R

For cause shown IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above entitled action is hereby dismissed.

Dated this 30 day of June, 1983.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INTERNATIONAL AMERICAN CERAMICS, INC., an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	No. 83-C-316-E
JOSE CAYABYAB TORIO,	)	
Defendant.	)	

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within twenty (20) days that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 30th day of June, 19833.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT W. McLAUGHLIN, Plaintiff, vs. DISCOVERY OIL AND GAS, INC., an Oklahoma corporation; LARRY HOOVER, an individual; ORVAL DeLOZIER; WILLIAM H. PHILLIPS; ANDY ANDERSON; and THE FIRST NATIONAL BANK OF ALTAMONT, ILLINOIS, Defendants.	)	No. 81-C-548-E

DEFAULT JUDGMENT

NOW on this 29th day of June, 1983, the above-styled and numbered cause comes on before the Court upon the Motion for Default Judgment filed by the Defendants and Cross-complainants, Orval DeLozier and William H. Phillips, against Cross-defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation only, and upon the Entry of Default as entered by the Clerk of the Court. The Court, having reviewed the pleadings filed herein, having been fully advised in the premises, finds that on February 3, 1982, Defendants and Cross-complainants, Orval DeLozier and William H. Phillips, filed their Cross-complaint against the Defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation, and that on February 8, 1982, Defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation, filed its written Answer to the Cross-complaint of Orval DeLozier and William H. Phillips, through Defendant's, Discovery Oil and Gas, Inc., attorney, Mr. Douglas L.

Boyd. On May 19, 1982, said attorney Douglas L. Boyd filed his Motion to Withdraw as Attorney of Record which was thereafter granted by the Court. Defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation, has never secured new counsel of record and has otherwise failed to defend, and in particular, wholly failed to appear, at the pre-trial conference scheduled in this matter on March 8, 1983, at 2:10 o'clock p.m., and is in default.

The Court further finds that the Defendants and Cross-complainants, Orval DeLozier and William H. Phillips, are entitled to the relief prayed for in their Cross-complaint and Amended Complaint against the Cross-defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation only, in that the assignment of oil and gas leases and a memorandum of agreement, attached as Exhibits "1" and "A" made, executed, delivered, and entered into by and between Defendants and Cross-complainants, Orval DeLozier an William H. Phillips, and the Cross-defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation, are in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court tha the Defendants and Cross-complainants Orval DeLozier and William H. Phillips have and recover judgment against the Cross-defendant, Discovery Oil and Gas, Inc., an Oklahoma corporation, only, in the prinicipal sum of $16,800.00, together with interest thereon at the rate of twelve percent (12%) per annum from November 1, 1979, to date of the entering of the default judgment herein, and interest thereafter at the rate of fifteen percent (15%) per annum until paid, and for the costs of this action accrued and accruing.

FOR ALL OF WHICH LET EXECUTION ISSUE.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-191-E
	)	
RANDALL S. GREEN,	)	
	)	
Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 29 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Randall S. Green, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Randall S. Green, was personally served with Summons and Complaint on June 28, 1983. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $436.00, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Randall S. Green, in the amount of $436.00, plus costs and

interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant U.S. Attorney

RANDALL S. GREEN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOE H. HART, an Individual,

Plaintiff,

vs.

JOHN DePACE d/b/a J & K TOOL and MACHINE,

Defendant.

No. 82-C-498-E

JUDGMENT

THIS action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing, that the action be dismissed on the merits, and that the Defendant John DePace d/b/a J & K Tool and Machine recover of the Plaintiff his costs of action.

Dated this 29th day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DARRICK BRONSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-199-E

ORDER

Now on this 29th day of June, 1983, it appears that the Defendant in the above-captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaint against Defendant, Darrick Bronson, be and is dismissed without prejudice.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	No. 82-CR-52-C
ELMER HALL,	)	No. 83-C-501-C ✓
Defendant.	)	

ORDER

Elmer Hall has filed a motion pursuant to 28 U.S.C. §2255 to vacate his sentence imposed by the Court on November 24, 1983 in 82-CR-52-C. Hall claims that false allegations contained in his pre=sentence report, while not considered by the Court in sentencing him, were seen by and considered by the Parole Commission in denying him probation or work release privileges.

In Brown v. United States, 610 F.2d 672 (9th Cir. 1980), a federal prisoner complained that he was consistently denied parole because his presentence report contained statements that he alleged were inaccurate. The circuit court held that the district court was without jurisdiction to reach the merits of his claim in a §2255 action. The court stated that "A petition under §2255 can test only the sentence imposed and not the sentence 'as it is being executed.'" The court further noted that "a petition under 28 U.S.C. §2241 is the proper form of proceeding for obtaining review of parole decisions." See also

2

Robinson v. U.S., 474 F.2d 1085 (10th Cir. 1973); Tedder v. United States Board of Parole, 527 F.2d 593, 594, n.1. (9th Cir. 1975); Garland v. United States, 450 F.Supp. 206 (S.D.N.Y. 1978).

A petition under §2241 must be addressed to the district court which has jurisdiction over Brown or his custodian. Brown, supra, 677; Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). Because Hall is confined to the Federal Prison in El Reno, Oklahoma, any complaints he has against parole authorities must be addressed to the United States District Court for the Western District of Oklahoma. Moreover, because this Court (Northern District of Oklahoma) lacks jurisdiction over the United States Pardon and Parole Board located in Dallas, Texas, it cannot construe Hall's §2255 petition as a §2241 petition. Brown, supra, 677.

For these reasons, Hall's motion to vacate the sentence imposed in 82-CR-52-C must be and hereby is overruled and the action herein is dismissed.

It is so Ordered this 29th day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEPHEN R. REAVES,

Petitioner,

vs.

MACK H. ALFORD and THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA,

Respondents.

NO. 82-C-1031-B

O R D E R

This matter comes before the Court on a pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. §2254 by Stephen R. Reaves.

Petitioner is presently serving a ten year sentence at Stringtown Correctional Center, Stringtown, Oklahoma by virtue of a judgment and sentence rendered on November 14, 1980 by the Honorable Jay D. Dalton, District Judge of Tulsa County, Oklahoma. Petitioner was charged with second degree burglary in Case No. CRF-80-205. Following a preliminary hearing and motion hearing at which testimony was taken, the petitioner waived his right to jury trial and agreed to stand on the record of the motion and preliminary hearings. The trial judge found the petitioner guilty and assessed punishment at ten years.

Petitioner then perfected a direct appeal to the Court of Criminal Appeals of the State of Oklahoma. The judgment and sentence of the trial court was affirmed in an unpublished opinion in Case No. F-81-335 filed August 6, 1982. Following his

direct appeal exhausting all state remedies petitioner filed this §2254 federal habeas corpus petition.

As an initial matter, the Court notes that petitioner raises no factual questions requiring an evidentiary hearing. See 28 U.S.C. §2254(d).

Petitioner alleges three grounds for habeas corpus relief, all involving an abridgment, in some way or another, of his federal due process rights dealing with his positive identification by the victim, Mr. Rhodes. The three grounds as set out in his petition state

Ground One: The pretrial photographic identification procedures were so impermissibly suggestive that there was great likelihood of irreparable misidentification and admission of in-court identification by victim, predicated on the photograph display, was a violation of due process entitling petitioner to habeas corpus relief.

Ground Two: Petitioner was denied his Winship rights protecting him against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime of burglary, second degree.

Ground Three: Impermissible suggestiveness of pretrial photographic identification procedures used in

this case are mixed questions of law and fact freely reviewable notwithstanding state post-conviction procedures, by federal courts on application for habeas relief.

Each ground will be dealt with in separate sections. In view of the reasons set forth below, the writ is denied.

I. PRETRIAL IDENTIFICATION PROCEDURES AND IN-COURT IDENTIFICATION

The gravamen of this ground is that the allegedly impermissible pretrial photo identication procedures so tainted the victim's in-court identification that it should have been excluded from trial evidence. In Manson v. Brathwaite, 432 U.S. 98 (1977) the Supreme Court said:

> "... reliability is the linchpin in determining the admissibility of identification testimony...The factors to be considered are set out in Biggers. 409 U.S., at 199-200, 93 S.Ct. 37. These include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. Against these factors is to be weighed the corrupting effect of the suggestive identification itself."

Manson as well as Neil v. Biggers, 409 U.S. 188 (1972), Simmons v. United States, 390 U.S. 377 (1968), and United States v. Wade, 388 U.S. 218 (1967), stand for the proposition that a suggestive confrontation does not in and of itself require suppression. The totality of the circumstances must be considered to determine whether sufficient independent basis for the identification leads

one to conclude that the identification is reliable. This is the method or standard used by the trial court. United States v. Williams, 605 F.2d 495 (10th Cir. 1979); United States v. Herring, 582 F.2d 535 (10th Cir. 1978). The Tenth Circuit, in a recent case, stated the test as follows:

> "If the pretrial photographic array was impermissibly suggestive and the in-court identification by the witness unreliable, then the identification should be excluded..."

United States v. Shoels, 685 F.2d 379 (10th Cir. 1982).

The state trial court and appellate court held the pretrial procedures were not so impermissibly suggestive as to lead to a substantial risk of misidentification. See appellate court opinion, 649 P.2d 780, 783 (Okl. 1982). After a careful review of all the written indicia dealing with this case, this Court affirms this conclusion. Even if the pretrial procedures were impermissibly suggestive, the witness' identification must be found unreliable after a consideration of the "totality of the circumstances", before the in-court identification can be excluded. See Dasher v. Stripling, 685 F.2d 385 (10th Cir. 1982); United States v. Williams, 605 F.2d 495 (10th Cir. 1979). In considering the totality of the circumstances to determine reliability, certain factors must be considered. These include:
the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the criminal, the level of the certainty demonstrated at the confrontation, and the time between the crime

and the confrontation. See Manson, supra. Each of these factors requires a finding of historical fact by the state courts to which a "presumption of correctness" applies as mandated by §2254(d), unless it appears from the record that the factual determinations of the state courts are not fairly supported. See Sumner v. Matta, 449 U.S. 539 (1981); Sumner v. Matta, 455 U.S. 591 (1982) (Sumner II).

The Oklahoma Court of Criminal Appeals made the following factual determinations:

> "In this case, the victim had ample opportunity to view Steven Reaves, even though it was fairly dark at his apartment. Rhodes struggled with his assailant at very close range. Outside the apartment, Rhodes wrestled Richard Reaves for possession of a pry bar. Inside the apartment Rhodes attempted to disarm Richard Reaves of the pistol he had aimed at his head. Further, he had an excellent opportunity to view Steven Reaves in his lighted bathroom when he robbed him of his wallet.
>
> Rhodes apparently directed most of his attention toward the appellant. The struggle for the pry bar and the pistol ensured that the victim's attention was directed toward the appellant. His attention on the assailant was clearly more than a casual observer. The victim was fighting with his assailant for his life.
>
> The victim also gave the police a fairly good description of the assailant later identified as the appellant, Steven Reaves. He accurately described the appellant as a white male, blond hair, five foot-seven to five foot-eight, and light complexion. He also described the coat worn by the assailant during the burglary.
>
> Although the victim could not positively identify the appellant at the hospital, he did tentatively identify both assailants. Later, he positively identified the appellant.

> Lastly, time lapse between the crime and the identification was reasonably short. He identified the appellant about five days after the incident. A sooner identification was impossible because Rhodes' eyes were swollen shut during the first few days he was in the hospital. The second and positive identification of the appellant was merely eleven or twelve days after the burglary."

The Court of Criminal Appeals found these factors satisfactory to insure reliability and we find no reason, after a careful review of the record, to disturb them.

Although the ultimate legal ground as to the constitutionality of the pretrial identification procedures used is a mixed question of law and fact not governed by the presumption of §2254(d), we find no constitutional reason to disturb the state appellate court's legal conclusion either. Sumner v. Matta II, 455 U.S. 591 (1982).

In light of this, the defendant's first ground clearly fails.

II. WINSHIP RIGHTS

Petitioner's second ground deals with two complaints: 1) his identification was not established beyond a reasonable doubt and therefore his constitutional right to this high standard as articulated by the United States Supreme Court in In re Winship, 397 U.S. 358, 364 (1970) was violated; and 2) the burden of proof in petitioner's motion to suppress the pretrial identification at a preliminary hearing, being placed upon him to first show impropriety, was also a violation of his Winship rights.

Petitioner's first complaint alleges insufficiency of evidence for the crucial element of identification. To sustain conviction the proper standard of review for federal courts in habeas corpus proceedings is "whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). Stated negatively, the petitioner is entitled to relief only if "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." Chatfield v. Ricketts, 673 F.2d 330, 332 (10th Cir. 1982) citing Jackson, supra at 324.

Here, the transcript indicates the victim consistently identified the petitioner and did not waver during a thorough cross-examination (Tr. 9, 20-70). Therefore, the Court finds that a rational trier of fact could have found this identification element beyond a reasonable doubt. Thus, petitioner's Winship rights were not violated and this first complaint must fail.

Petitioner's second complaint deals with the placement of the burden of proof in a motion to suppress the pretrial identification because of improper photo identification procedures. Pursuant to Oklahoma law, the trial court placed the burden upon the defendant to show some impropriety as to the photo identification which if satisfied would have shifted the burden onto the state to establish independent aspects of reliability. Battles v. State, 513 P.2d 1314, 1317 (Okl.Crim.App. 1973); Cooper v. State,

599 P.2d 419 (Okl.Crim.App. 1979). The state trial court held that the petitioner did not meet the burden during the motion to suppress hearing. This was affirmed on appeal by the state appellate court.

The United States Supreme Court has stated that "a suggestive identification procedure does not in itself intrude upon a constitutionally protected interest" as does a warrantless search. Manson v. Brathwaite, 432 U.S. 98, 113 n. 13 (1977). In view of this, the Court finds no impropriety in the placement of the burden of proof under Oklahoma law and holds that it does not violate petitioner's constitutional rights as they relate to In re Winship, 397 U.S. 358 (1970). This second ground of the petitioner must also fail.

III. IMPERMISSIBLE SUGGESTIVENESS IS A MIXED QUESTION OF LAW AND FACT

Petitioner's third ground seems to contain a statement of the law other than a ground for habeas corpus relief. Regardless, the petitioner's ground one, which deals with impermissible suggestiveness, has been dealt with on the merits by this Court and has been denied. The third ground seems to possess no independent ground for relief outside ground one and is, therefore, denied.

Petitioner's petition for writ of habeas corpus is hereby denied.

ENTERED this 28th day of June, 1983.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 29 1983

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ABRAM E. BRENTLINGER,

Plaintiff,

vs.

LIFE INSURANCE COMPANY OF NORTH AMERICA,

Defendant.

Case No. 82-C-448-E

DISMISSAL

COMES NOW the Plaintiff, Abram E. Brentlinger, and hereby dismisses, with prejudice to the filing of the same, all of his claims herein against the Defendant, Life Insurance Company of North America.

FRASIER, FRASIER & GULLEKSON

By: _____
James E. Frasier
717 South Houston
Tulsa, OK 74127

Attorneys for Plaintiff

APPROVED:

GABLE & GOTWALS

Theodore Q. Eliot

Theodore Q. Eliot
20th Floor - Fourth National
Bank Building
Tulsa, OK 74136

Attorneys for Defendant

CERTIFICATE OF MAILING

This is to certify that on the 29th day of June, 1983, a true and correct copy of the above and foregoing Dismissal was mailed to:

Theodore Q. Eliot
Gable & Gotwals
20th Floor - Fourth National
Bank Building
Tulsa, OK 74119

James E. Frasier

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 29 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SAM PERRYMAN,

Plaintiff,

-vs-

HINTEX LTD., an Oklahoma corporation, and J. CHRISTOPHER HASTINGS,

Defendants.

Case No. 82-C-1076-B

JOURNAL ENTRY OF JUDGMENT

Now on this 29th day of June, 1983, comes on the above styled and numbered cause to be heard. The Plaintiff was present by and through his attorney, James Clinton Garland; the Defendant, J. Christopher Hastings, was present in person. The Court finds that the parties have agreed that this Court may enter judgment against Defendant J. Christopher Hastings as prayed for in Plaintiff's Complaint. The Court specifically finds, pursuant to the agreement of parties, that Plaintiff has been damaged by Defendant, J. Christopher Hastings in the sum of TEN THOUSAND DOLLARS ($10,000). The Court further finds, upon stipulation of the parties, that representation and omissions of material fact were made willfully or with reckless disregard of the truth and without any reasonable basis by Defendant, J. Christopher Hastings to Plaintiff to his detriment and that Plaintiff should have,

pursuant to the agreement of the parties, judgement against Defendant, J. Christopher Hastings in the sum of TEN THOUSAND DOLLARS ($10,000) punitive damages.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff have judgment against Defendant, J. Christopher Hastings in the sum of TEN THOUSAND DOLLARS ($10,000) compensatory damages plus the sum of TEN THOUSAND DOLLARS ($10,000) punitive damages, with interest at the rate of fifteen percent (15%) per annum, as provided by law plus the costs of this action.

THOMAS R. BRETT, UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND TO CONTENT:

JAMES CLINTON GARLAND, Attorney for Plaintiff

J. CHRISTOPHER HASTINGS, Defendant

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

FILED
JUN 29 1983
Jack C. Silver, Clerk
U. S. DISTRICT COURT

SAMMIE METCALF	§	
	§	
VS.	§	CIVIL ACTION NO.
	§	82-C-811-B
BURLINGTON NORTHERN, INC.	§	

DISMISSAL WITH PREJUDICE

Plaintiff, Sammie Metcalf, files this his Motion to Dismiss with Prejudice and would represent to the Court that the case has been finally settled and disposed of. Plaintiff requests that the above cause of action be dismissed with prejudice to bear his own costs.

JONES, GRANGER, HAAG & TRAMUTO

ROBERT M. TRAMUTO
Attorney for Plaintiff
5959 West Loop South, #666
P. O. Box 4340
Houston, Texas 77210
(713)668-0230

ORDER

Upon stipulation of the parties and for good cause shown, Plaintiff's cause of action against the Defendant is hereby dismissed with prejudice to the refiling of such action, each party to bear their own costs.

IT IS SO ORDERED this 30 day of June, 1983.

FILED
JUN 30 1983
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT JUDGE

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-482-B
JAMES C. LOWE, et. al., Defendants.	)	

O R D E R

For good cause shown, it is hereby ORDERED that Athena J. Lowe is hereby dismissed from this action. The United States Department of Agriculture, Farmers Home Administration, released Athena J. Lowe only from person liability as shown in the attached Exhibit A to Plaintiff's Application.

Dated this 28 day of June, 1983.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BUEL L. BULLOCK	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-422-E

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 28th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 28th day of June, 1983.

Assistant United States Attorney

FILED

JUN 28 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-144-E
	)	
GLEN H. WALKER,	)	
	)	
Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 28th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 28th day of June 1983.

Assistant United States Attorney

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RICK ALLEN WILLIAMS and VICKIE A. GREEN, Plaintiffs,	)	
vs.	)	NO. 82-C-792-B
FARMERS INSURANCE COMPANY, INC., a foreign insurance corporation, Defendant.	)	

O R D E R

This motion comes before the Court on defendant Farmers Insurance Company's ("Farmers") Motion for Summary Judgment filed January 18, 1983. For reasons described herein, the Court concludes Defendant's Motion should be sustained.

FACTUAL BACKGROUND

On May 5, 1981, plaintiff, Rick Allen Williams, was injured in an automobile collision when the motorcycle he was operating collided with a car driven by Nola Ann Thompson. Williams suffered injuries for which he recovered under both his own insurance policy with Farmers[1] and Ms. Thompson's automobile liability insurance policy. For each claim, Williams recovered the entire amount available under the limit of the policy. Subsequent to his recovery under those insurance policies, Williams, and his natural mother, Vickie A. Green, commenced this action against

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1 See Defendant's Exhibit C, invoice for Policy Number 08 10383 77 00, Rick Allen Williams, insured. See also, Defendant's Exhibit F, copy of the Farmers Insurance policy.

Farmers for recovery under the uninsured motorist provisions of Green's policy with Farmers. The plaintiffs allege that Thompson was underinsured and could not adequately compensate Williams for his injuries.

Plaintiffs contend that Williams is an insured under the provisions of Green's insurance policy which provides coverage for certain relatives. Farmers asserts that Williams is not an insured under the provisions of Green's policy because the express provisions of the policy provide coverage for relatives of the named insured who are residents of the insured's household who do not own their own automobiles.[2] Farmers does not dispute plaintiff's contention that Williams was a member of Green's household at the time of the accident. Farmers argues that because Williams owned his own automobile he is excluded from classification as an insured.

Plaintiffs also argue that the definition of "relative" in Green's insurance policy is confusing and contrary to the public policy expressed in Oklahoma's Uninsured Motorist Statute, 36

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2 See Defendant's Exhibit F, p.1, Part I A, "Additional Definitions."

Okl.St.Ann. 1982 Supp. §3636 to provide coverage for the immediate family of any named insured.[3]

APPLICABLE LAW

The question of whether a relative who lives in the same household of the insured, and who owns his own automobile, is or should be an insured under provisions of an insurance policy like the policy issued by Farmers to Vickie Green is a matter not previously litigated in Oklahoma. Defendant points out that this particular question has been raised in many other jurisdictions, some of which are guided by statutes strikingly similar to

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3 36 Okl.Stat.Ann. 1982 Supp., §3636 provides:

> (A) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be issued, delivered, renewed, or extended in this state with respect to a motor vehicle registered or principally garaged in this state unless the policy includes the coverage described in subsection (B) of this section.
>
> (B) The policy referred to in subsection (A) of this section shall provide coverage therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom. Coverage shall not be less than the amounts or limits prescribed for bodily injury or death for a policy meeting the requirements of Section 7-204 of Title 47, Oklahoma Statutes, as the same may be hereafter amended; provided, however, that increased limits of liability shall be offered and purchased if desired, not to exceed the limits provided in the policy of bodily injury liability of the insured....

§3636,[4] and some guided by statutes markedly different from §3636.[5]

Insurance policies are contracts and they are analyzed using the same principles of law applicable to other contracts. Taylor v. New York Life Ins. Co., 324 F.2d 768 (10th Cir. 1963). The terms of an insurance policy should be construed according to their plain, ordinary, and accepted use unless it affirmatively appears that a different meaning was intended. National Aviation Underwriters, Inc. v. Altus Flying Service, Inc., 555 F.2d 778 (10th Cir. 1977). Moreover, the policy must be fairly construed to effectuate its purpose, and the construction of the policy should reflect both common sense and the intent of the parties. Wiley v. Travelers Ins. Co., 534 P.2d 1234 (Okl. 1974). The court cannot revise the contract to the advantage of either party. Williams Petroleum Co. v. Midland Coopeatives, Inc., 539 F.2d 694 (10th Cir. 1976). All provisions of the policy should be recognized and given their full effect. HBOP Ltd. v. Delhi Gas & Pipeline Corp., 645 P.2d 1042 (Okl.App. 1982).

The first question is whether Williams is an insured under the provisions of his mother's policy. Part I A of the policy

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4 Farmers Ins. Co. of Washington v. Miller, 549 P.2d 9 (Wash. 1976); Lewis v. American Family Ins. Group, 555 S.W.2d 579 (Ky. 1977); Robertson v. Cumis Ins. Co., 355 So.2d 1371 (La. App. 1978); Washington v. Travelers Ins. Co., 284 N.W.2d 754 (Mich.App. 1979); Beliveau v. Norfolk & Dedham Mutual Fire Ins. Co., 411 A.2d 1101 (N.H. 1980); France v. Liberty Mutual Ins. Co., 380 So.2d 1155 (D.Fla. 1980); Famuliner v. Farmers Ins. Co., 619 S.W.2d 894 (Mo.App. 1981).

5 Anderson v. Illinois Farmers Ins. Co., 269 N.W.2d 702 (Minn. 1978); Lopez v. State Farm Fire and Casualty, 58 Cal. Rptr. 243 (Cal. 1967).

issued by Farmers to Vickie Green provided coverage to the named insured or a relative with respect to a non-owned vehicle. This section defines "relative" in its list of Additional Definitions: "Relative means a relative of the named insured who is a resident of the same household, provided neither such relative nor his spouse owns an automobile." This definition applies to Part II of the policy through its Applicable Definitions. Part II provides benefits for bodily injury caused by uninsured motorists. Williams seeks recovery under this section. The definition of "relative" applies consistently throughout the provisions under which Williams seeks to be classified as an insured. Therefore, he is an insured only if he meets the definition of "relative" set forth in Part I A. The evidence submitted demonstrates unequivocally Rick Williams owned an automobile at the time of the accident. He is precluded from classification as an insured under his mother's policy for this reason.

The Court finds no merit in plaintiffs' assessment of the policy's language as "obscure and ambiguous."[6] The common understanding of the words and phrases in the context of the policy is exactly their literal meaning. The plain meaning of the language reflects not only common sense, but the intent of the parties; Farmers and Green intended to provide coverage for Green and her relatives living in her household who did not own automobiles, i.e., those relatives who had no reason to secure liability insurance in their own names.

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6 Plaintiffs' Brief in Response to Motion For Summary Judgment, at 5.

The second question is whether Williams should be considered an insured under his mother's policy on the basis of the Oklahoma Uninsured Motorist Statute, 36 Okl.St.Ann. 1982 Supp., §3636. Plaintiffs erroneously assert that the public policy expressed in §3636 requires the Court to consider Williams an insured under his mother's policy because he is a "family member" and family members are implicitly included among those "persons insured" within the meaning of §3636. The Court considers such an interpretation a misconstruction of the statute's purpose and the public policy expressed therein. The purpose of the Uninsured Motorist Statute is to protect those who are legally entitled to recover from owners or operators of uninsured vehicles. Markham v. State Farm Mutual Ins. Co., 464 F.2d 703 (10th Cir. 1972). The statute does not specify a class of persons who must be insured in a particular automobile insurance policy. The statute does require that all automobile liability insurance policies provide uninsured motorist coverage "for the protection of persons insured thereunder." §3636(B). The statute is violated only when an insurer attempts to narrow the uninsured motorist protection with regard to persons who qualify as insureds under the policy. Williams was not an insured under his mother's policy. §3636 provides protection for Williams under the conditions of his own policy with Farmers, but the statute cannot be construed to benefit Williams through a policy under which he did not qualify as an insured.

The Court's attention has been directed to other states that have litigated the validity of statutes similar in purpose and language to §3636.[7]. These cases are summarized in Famuliner v. Farmers Ins. Co., 619 S.W.2d 894 (Mo.App. 1981). As the Missouri Court of Appeals noted, "[t]he results have been consistent and uniform in reaching the conclusion here expressed." 619 S.W.2d at 897. Those courts interpreting similar statutory provisions have consistently found that the public policy expressed in the statute did not require insurance policies to provide uninsured motorist coverage to any particular class of persons, but only to persons who qualified as insured under the terms of the particular policy.

The Court finds it unnecessary to address the bulk of plaintiffs' authority for the argument that the exclusion of Williams as an insured under Green's policy violates public policy. The authority cited is wholly inapplicable to the present question.

Rule 56 of the Federal Rules of Civil Procedure provides summary judgment is proper when no genuine issue of material fact remains and the moving party is entitled to judgment as a matter of law. Bruce v. Martin-Marietta, 544 F.2d 442, 445 (10th Cir. 1976); Ando v. Great Western Sugar Co., 47 F.2d 531, 535 (10th Cir. 1973). Because Williams is not an insured under the terms of his mother's policy and because this exclusion violates no public policy expressed in the Oklahoma Statutes, defendant is entitled to summary judgment as a matter of law.

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7 Defendant's Brief in Support of Motion for Summary Judgment, at 9.

IT IS THEREFORE ORDERED defendant's Motion for Summary Judgment is sustained.

ENTERED this 27th day of June, 1983.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

THE B. F. GOODRICH COMPANY, a New York corporation, Plaintiff,	)	
vs.	)	No. 82-C-1211C
MANLEY TRUCK LINE, INC., a Missouri corporation; and HAYES MOTOR FREIGHT, INC., an Oklahoma corporation, Defendants.	)	

FILED
JUN 24 1983
Jack C. Silver, Clerk
U. S. DISTRICT COURT

DEFAULT JUDGMENT

NOW ON THIS THE 23rd DAY OF June, 1983, comes Plaintiff, Bank of Oklahoma, N.A., by counsel, and Defendant, Hayes Motor Freight, Inc., appears not, and the Court, having reviewed the pleadings and materials of record herein, and having considered the evidence presented by Plaintiff, and premises considered, finds as follows:

The Defendant, Hayes Motor Freight, Inc., has failed to plead or otherwise defend in this action after being duly served in the manner provided by law and is therefore in default. The Complaint and Summons in this action were served on the Defendant by serving the Oklahoma Secretary of State as statutory service agent for said Defendant on the 30th day of March, 1983, as appears from the Acknowledgement of Receipt of Summons and Complaint; the time within which the Defendant may answer or otherwise move as to the Complaint has expired. Plaintiff has filed an Application for Default,

together with an Affidavit, and the Clerk has entered default herein.

The amount of debt owed by Defendant Hayes Motor Freight, Inc., to Plaintiff is ascertainable and herein listed as Thirty-Five Thousand Nine Hundred Sixty-Two and 00/100 Dollars ($35,962.00), together with interest at the legal rate of 6% per annum from May 28, 1981, to the date of this judgment and at the rate of 15% per annum as provided for by law from the date of judgment until paid, together with an attorney's fee of Two Thousand Five Hundred Dollars ($2,500.00).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that default judgment is hereby entered in favor of the Plaintiff against the Defendant Hayes Motor Freight, Inc., in the amount of Thirty-Five Thousand Nine Hundred Sixty-Two and 00/100 Dollars ($35,962.00), together with interest at the legal rate of 6% per annum from May 28, 1981 to the date of this judgment and from the date of this judgment until paid at the rate of ~~15~~ 9.599% per annum as provided by law, and an attorney's fee in the amount of Two Thousand Five Hundred Dollars ($2,500). This action shall proceed as between Plaintiff and Defendant, Manley Truck Line, Inc., without regard to the Default herein entered.

John Dale Booth
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 24 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN E. JACOBS,

Defendant.

40-CR-57-E

No. 83-C-238-E

ORDER DENYING MOTION TO
VACATE, SET ASIDE OR CORRECT SENTENCE

The Court has before it the motion of Melvin E. Jacobs to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The movant entered a plea of guilty on May 15, 1980 to counts 1 and 3 of an indictment charging him with uttering a forged United States Treasury Check. The movant's petition to plead guilty reveals a plea agreement entered into between the government and the movant to the effect that upon an acceptance of guilty pleas to counts 1 and 3, count 2 would be dismissed. The movant was sentenced on June 12, 1980 to one (1) year in prison on each of counts 1 and 3. It was ordered that the sentence imposed in count 3 would run consecutively with count 1.

The movant alleges a violation of due process in that his federal sentence should have started to "run" at the time sentence was imposed, and when he was released to state authorities the federal time should have continued to run. Movant asserts that he has already served over two (2) years pursuant to a state sentence that should have been "federal time" and that since federal authorities did not seek return of custody, his federal sentence has been served.

Title 18 U.S.C. § 3568 governs the time upon which a federal sentence commences. Section 3568 says in pertinent part "the sentence of imprisonment of any person convicted of an offense shall commence

to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The general rule is that the time of sentence commences to run from the date on which such person is received at the place of service. Anderson v. United States, 405 F.2d 492 (10th Cir. 1969); Miller v. Willingham, 400 F.2d 873 (10th Cir. 1968). The Tenth Circuit has held that a federal sentence is consecutive to a state's sentence even when no reference is made to the state sentence. Miller v. Willingham, supra; Hall v. Looney, 256 F.2d 59 (10th Cir. 1958).

At the time of sentencing, movant was incarcerated in the Rogers County jail. At present movant is incarcerated in an Oklahoma state institution in Stringtown, Oklahoma, pursuant to a state sentence. Movant's federal sentence will not commence to run until the movant is actually delivered to federal custody for service of the federal sentence. Therefore movant's argument that his federal sentence has been served is without merit, and wholly unsupported in the law.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of Melvin E. Jacobs to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 be and hereby is denied.

ORDERED this 14TH day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 24 1983
Jack C. Silver, Clerk
U. S. DISTRICT COURT

BANK OF OKLAHOMA, N.A., a national banking association, Plaintiff,	)	
vs.	)	No. 83-C-328-C
GERI RUSSO, Defendant.	)	

DEFAULT JUDGMENT

NOW ON THIS THE 23 DAY OF June, 1983, comes Plaintiff, Bank of Oklahoma, N.A., by counsel, and the Defendant, Geri Russo, appears not, and the Court, having reviewed the pleadings and materials of record herein, and having considered the evidence presented by Plaintiff, and premises considered, finds as follows:

The Defendant, Geri Russo, has failed to plead or otherwise defend in this action after being duly served in the manner provided by law and is therefore in default. The Complaint and summons in this action were served on the Defendant on the 19th day of April, 1983, as appears from the executed Acknowledgement of Receipt of Summons and Complaint; the time within which the Defendant may answer or otherwise move as to the Complaint has expired. Plaintiff has filed an Application for Default, together with an Affidavit, and the Clerk has entered default herein.

The amount of debt owed is ascertainable and herein listed as Twenty Thousand Four Hundred Twenty-Five and 50/100 Dollars ($20,425.50), together with interest at the legal rate of 6% per annum from April 16, 1980 to the date of this judgment and from the date of judgment until paid at the rate of 15% as provided by law, and Plaintiff is entitled to recover an attorney's fee in the amount of Two Thousand Dollars ($2,000.00) as prevailing party.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that default judgment is hereby entered in favor of the Plaintiff and against the Defendant in the amount of Twenty Thousand Four Hundred Twenty-Five and 50/100 Dollars ($20,425.50), with interest at the legal rate of 6% per annum from April 16, 1980 to the date of this judgment and from the date of this judgment until paid at the rate of 15% as provided by law, together with an attorney's fee in the amount of Two Thousand Dollars ($2,000.00).

s/H. DALE COOK

United States District Judge

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, v. JACK L. DRESSLER; WANDA D. DRESSLER; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, Defendants.	)	FILED JUN 24 1983 Jack C. Silver, Clerk U. S. DISTRICT COURT CIVIL ACTION NO. 83-C-236-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 23 day of June, 1983. The Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendants, Jack L. Dressler, Wanda D. Dressler, County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, appearing not.

The Court being fully advised and having examined the file herein finds that Defendants, Jack L. Dressler and Wanda D. Dressler were personally served on March 16, 1983.

It appears that the Defendants, Jack L. Dressler and Wanda D. Dressler have failed to answer and that default has been entered by the Clerk of this Court on May 31, 1983.

It further appears that County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, were served on March 15, 1983. Thereafter on March 31,

1983, answers were entered, however, on June 3, 1983, they disclaimed any interest in said action.

The Court further finds that this is a suit based upon a mortgage note and for a foreclosure of a real property mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Four (4), Block Four (4),
> APPALOOSA ACRES THIRD, an Addition
> to the Town of Glenpool, Tulsa County,
> State of Oklahoma, according to the
> recorded Plat thereof.

THAT the Defendants Jack L. Dressler and Wanda D. Dressler, did on the 26th day of June, 1980, executed and deliver to the Farmers Home Administration their mortgage and mortgage note in the sum of $34,000.00 with 11½ percent interest per annum, and further providing for the payment of monthly installments of principal and interest.

That on August 18, 1980, the Defendants, Jack L. Dressler and Wanda D. Dressler, entered into an Interest Credit Agreement with the Farmers Home Administration, United States Department of Agriculture, whereby the interest rate on the said notes herein being sued upon would be lowered, thereby reducing the total monthly payment by $198.00; that said Interest Credit Agreement expired by its own terms on September 26, 1982, and; that said mortgages secured the recapture of the interest credit and subsidy granted to the said Defendants under said Interest Credit Agreement; and that under the authority of 42 U.S.C. §1490a and 7 C.F.R. 1951, Subpart I, Plaintiff is entitled to

recapture the subsidy granted said Defendants under the Interest Credit Agreement in the amount of $5,355.52.

The Court further finds that Defendants Jack L. Dressler and Wanda D. Dressler, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $33,987.92 as unpaid principal, plus accrued interest of $1,375.40 as of November 24, 1982, plus interest thereafter at $10.7085 per day until paid, plus the costs of this action accrued and accruing.

The Court further finds that the County Treasurer, Tulsa County, Oklahoma and Board of County Commissioners, Tulsa County, Oklahoma, have disclaimed any interest in this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against Defendants Jack L. Dressler and Wanda D. Dressler, for the sum of $33,987.92, plus accrued interest of $1,375.40 as of November 24, 1982, plus interest thereafter at $10.7085 per day, plus $5,355.52 of interest credit subsidy, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United

States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds in satisfaction of Plaintiff's judgment. The residue, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint herein are forever barred and foreclosed of any right, title, interest or claim to the real property or any part thereof.

s/H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HERBERT BEHRENS, an Individual,

Plaintiff,

vs.

WORTHS, INCORPORATED, a Virginia corporation a/k/a HAZEL-ROSE, INC., and HERBERT L. MASLAN, an individual,

Defendants.

Case No. 82-C-529-E

ORDER DISMISSING ACTION WITH PREJUDICE

Upon the Stipulation of the parties, the Court does hereby ORDER that this action be, and it is hereby, dismissed with prejudice. Each party is to bear its own costs and attorney fees.

IT IS SO ORDERED this 24 day of June, 1983.

/s/ James O. Ellison

James O. Ellison
United States District Judge

FILED

JUN 24 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
VERN J. KLUNDT; and CAROL M. KLUNDT,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 83-C-27-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 24 day of June, 1983. Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; and the Defendants Vern J. Klundt, and Carol M. Klundt, appearing not.

The Court being fully advised and having examined the file herein finds that the Defendant Vern J. Klundt was served with Summons and Complaint on January 25, 1983; that the Defendant Carol M. Klundt was served with the Complaint by publishing the same in a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 14, 1983, and continuing to April 18, 1983; and that this action is one in which service by publication is authorized by Title 12 O.S. Section 170.6(A) as counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of Defendant Carol M. Klundt and service of Summons cannot be made upon Carol M. Klundt within the state by

any other method, or upon said Defendant without the state by any other method.

The Defendants Vern J. Klundt, and Carol M. Klundt, have failed to answer the Complaint or otherwise plead and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and for foreclosure of a real property mortgage securing said mortgage note upon the following-described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> The S/2 of Lot Eleven (11), Block Three (3), KINLOCH PARK ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

THAT the Defendants Vern J. Klundt and Carol M. Klundt, did on the 28th day of December, 1977, execute and deliver to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage and promissory note in the sum of $10,500.00, payable in monthly installments, with interest thereon at the rate of eight and one/half (8½) percent per annum.

The Court further finds that the Defendants Vern J. Klundt and Carol M. Klundt made default under the terms of the aforesaid promissory note by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the above-named Defendants are indebted to the Plaintiff in the sum of $10,011.37 as of February 1, 1982, plus interest thereafter accruing at the rate of eight and one/half (8½) percent per annum until paid, plus the costs of this action accruing and accruing.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants Vern J. Klundt and Carol M. Klundt in the sum of $10,011.37 as of February 1, 1982, plus interest thereafter accruing at the rate of eight and one/half (8½) percent per annum, plus the cost of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED upon the failure of the previously named Defendants to satisfy the money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property herein, and apply the proceeds thereof as follows:

First:

In payment of the costs of this action, accrued and accruing, including the costs of sale;

Second:

In payment of the judgment rendered herein in favor of Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree the Defendants and all persons claiming under them since the filing of the Complaint herein, be and they are forever barred and foreclosed of any

right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

FRANK KEATING
United States Attorney

Nancy A. Nesbitt
NANCY A. NESBITT
Assistant United States Attorney

FILED

JUN 24 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES R. LEONARD, JR.,

Plaintiff,

vs.

CUSTOM ENGINEERING & MANUFACTURING CORPORATION,

Defendant.

CIVIL ACTION NO. 83-C-411-E

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, James R. Leonard, Jr., by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Custom Engineering & Manufacturing Corporation, by Mary T. Matthies, and hereby dismiss this action with prejudice by joint stipulation.

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

MARY T. MATTHIES
Attorney for Defendant

APPROVED:

JAMES R. LEONARD, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAUL A. BROCKWELL, et al.,

Plaintiffs,

vs.

MGIC INDEMNITY CORPORATION, A Wisconsin corporation,

Defendant.

No. 82-C-605-E

FILED

JUN 24 1983

Jack C. Silver, Clerk
U. S. District Court

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs take nothing, that the action be dismissed on the merits, and that the Defendant recover of the Plaintiffs its costs of action.

DATED this 14TH day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RUTH H. DODSON, Plaintiff,	)	
v.	)	No. 82-C-637-E
RICHARD SCHWEIKER, Secretary of Health and Human Services, Defendant.	)	

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed on June 9, 1983 in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

Accordingly, it is Ordered that this case be remanded to the Secretary for the purpose of re-evaluation of Plaintiff's disability pursuant to 20 CFR § 404.1520 and for the purpose of hearing additional evidence, including the testimony of a vocational expert or other specialists if the Secretary, in making the sequential evaluation of disability

as required by the regulations determines that such vocational testimony should be heard, or if Plaintiff desires to submit evidence on the vocational issue.

Dated this 14TH day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RUTH MOORE,

Plaintiff,

vs.

OFFICERS: MATNEY, LEEDY, GARDNER, UHLESS, HUDSON, PARKER, GARNARSON, UNHOLTZ and et al.,

Defendants.

No. 81-C-477-E

ORDER GRANTING MOTION TO DISMISS

The Court has before it the separate motions of Defendants Melvin Parker, Steve Leedy and James Matney, Deputy Sheriffs of Tulsa County, Oklahoma and Defendant Officers Gardner, Garnarson, Uhless, Unholtz and Hudson, City of Tulsa police officers, to dismiss this cause of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

In support of their motion, all parties submit that the complaint in this case facially discloses that each and all causes of actions alleged against the police officers and deputy sheriffs are barred by the statute of limitations, 12 O.S. § 95 as incorporated by 42 U.S.C. § 1983, § 1985.

There is no applicable federal statute of limitations relating to civil rights actions brought under Title 42 U.S.C. §§ 1983 and 1985. "The time within which such actions must be brought is to be determined by the laws of the state where the cause of action arose." Crosswhite vs. Brown, 424 F.2d 495, 496 (10th Cir. 1970). The applicable Oklahoma statute of limitations is found in Title 12 O.S. § 95. The statute provides in relevant part:

> Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
>
> . . . .
>
> Third. Within two (2) years: an action for trespass upon real property; an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated;
>
> . . . .
>
> Fourth. Within one (1) year: an action on a foreign judgment; an action for a libel, slander, assault, battery, malicious prosecution, or false imprisonment; ...

In Crosswhite, supra, the Tenth Circuit looked to the last overt act of the Defendant complained of and determined that that date was the time from which the statute of limitations began to run. The acts complained of by the Plaintiff are alleged by her to have occurred on September 13, 1979. Under the provisions of 12 O.S. § 95, the last date upon which the Plaintiff could commence her action was September 13, 1981. Title 12 O.S. § 97 provides that an action is "commenced" at the date of summons, which is the date that process is issued as long as it is actually served within sixty (60) days. The complaint in this case was filed October 13, 1981 which was well outside the statutory period for commencement of suit.

Courts are required to adhere strictly to statutory limitations periods. Monarch Asphalt Sales Co., Inc. v. Wilshire Oil Company of Texas, 511 F.2d 1073 (10th Cir. 1975).

> Periods of limitation are of long standing as a practical and necessary device to require, regardless of what may be the equities of the situation, that persons make known,

and take formal action to assert claims or rights they may have.

Armstrong v. Mapleleaf Apartments Ltd., 622 F.2d 466, 472 (10th Cir. 1979). It is not within the discretion of this Court to allow commencement of a suit barred by the statute of limitations. The Court must therefore order dismissal of this action as against all Defendants.

IT IS THEREFORE ORDERED AND ADJUDGED that the separate motions of the Defendants to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for a failure to state a claim be and hereby are granted.

IT IS FURTHER ORDERED that this complaint be and hereby is dismissed as to all Defendants.

ORDERED this 24TH day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DARRICK BRONSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-199-E

ORDER

Now on this 24th day of June, 1983, it appears that the Defendant in the above-captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaint against Defendant, Darrick Bronson, be and is dismissed without prejudice.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CYNTHIA KAY SHELL, a minor, by and through her father as next friend, STEVE SHELL,

Plaintiff,

vs.

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, a foreign insurance company

Defendant.

No. 83-C-172-E

APPLICATION FOR DISMISSAL WITH PREJUDICE

Comes now the Plaintiff and asks the Court to dismiss with prejudice the above-styled action as all issues between the Plaintiff and Defendant have been settled.

Dated this 21st day of June, 1983.

Attorney for Plaintiff

ORDER OF DISMISSAL

Upon application of the Plaintiff and for good cause shown, the above-styped case is dismissed with prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Civ 31
Rev. 12/81

JUDGMENT ON JURY VERDICT

United States District Court FOR THE NORTHERN DISTRICT OF OKLAHOMA

DOUGLAS ALAN BURDEN,
Plaintiff,

vs.

BUCK JOHNSON,
Defendant.

CIVIL ACTION FILE NO. 82-C-1079-BT

This action came on for trial before the Court and a jury, Honorable THOMAS R. BRETT, United States District Judge, presiding.

The issues having been duly tried and the jury having duly rendered its verdict, it is ordered and adjudged that judgment is entered for the Defendant and against the Plaintiff.

Dated at Tulsa, OK, this 23rd day of June, 19 83.

Thomas R. Brett

THOMAS R. BRETT
U.S. District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LEONARD R. BAKER, a/k/a LEONARD RAY BAKER; DIANA L. BAKER, a/k/a DIANA LEE BAKER; JAMES W. MILLER; SHIRLEY JEAN HICKS, a married woman, a/k/a SHIRLEY HICKS; MILLER PROPERTIES, INC.; BOARD OF COUNTY COMMISSIONERS, Craig County, Oklahoma; and COUNTY TREASURER, Craig County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 83-C-231-C

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 23 day of ~~May~~ June, 1983. The Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; the Defendant Leonard R. Baker, a/k/a Leonard Ray Baker, appearing by his attorney Kent Ryals; the Defendants County Treasurer, Craig County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, appearing by their attorney Orvan J. Hanson, Jr., Assistant District Attorney, Craig County, Oklahoma; and the Defendants Diana L. Baker, a/k/a Diana Lee Baker, James W. Miller, Shirley Jean Hicks, a married woman, a/k/a Shirley Hicks, and Miller Properties, Inc., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant Leonard R. Baker, a/k/a Leonard

Ray Baker, failed to acknowledge receipt of Summons and Complaint; the Defendant Diana L. Baker, a/k/a Diana Lee Baker, acknowledged receipt of Summons and Complaint on March 19, 1983; the Defendant James W. Miller acknowledged receipt of Summons and Complaint on April 4, 1983; the Defendant Shirley Jean Hicks, a married woman, a/k/a Shirley Hicks, acknowledged receipt of Summons and Complaint on March 15, 1983; the Defendant Miller Properties, Inc., acknowledged receipt of Summons and Complaint on April 4, 1983; the Defendant Board of County Commissioners, Craig County, Oklahoma, acknowledged receipt of Summons and Complaint on March 22, 1983; and the Defendant County Treasurer, Craig County, Oklahoma, failed to acknowledge receipt of Summons and Complaint.

It appears that the Defendant Leonard R. Baker, a/k/a Leonard Ray Baker, filed his Answer herein on April 18, 1983; that Defendant County Treasurer, Craig, County, Oklahoma, and Board of County Commissioners, Craig County, Oklahoma, duly filed their Answer herein on March 23, 1983; and that Defendants Diana L. Baker, a/k/a Diana Lee Baker, James W. Miller, Shirley Jean Hicks, a married woman, a/k/a Shirley Hicks, and Miller Properties, Inc., have failed to answer or otherwise plead and that their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and for foreclosure of a real property mortgage securing said mortgage note upon the following described real property located in Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 3 in Block 59, of the City of Vinita, Oklahoma, according to the U. S. Government Survey and recorded plat thereof.

That Leonard R. Baker and Diana L. Baker, did, on the 6th day of October, 1977, execute and deliver to the United States of America, acting through the Farmers Home Administration, their mortgage and mortgage note in the sum of $21,500.00 with eight percent (8%) interest per annum, and further providing for the payment of monthly installments of principal and interest.

The Court further finds that Leonard Ray Baker subsequently conveyed the property described above to Diana Lee Baker by Quit Claim Deed. Leonard Ray Baker was one and the same person as Leonard R. Baker and was a single person at the time of the execution of said Quit Claim Deed. Diana Lee Baker is one and the same person as Diana L. Baker.

The Court further finds that the Defendants Leonard R. Baker, a/k/a Leonard Ray Baker, and Diana L. Baker, a/k/a Diana Lee Baker, made default under the terms of the aforesaid mortgage note by reason of their failure to make monthly installments due thereon, which default has continued and that by reason thereof the above-named Defendants are now indebted to the Plaintiff in the sum of $21,045.22, plus accrued interest of $1,159.10 as of August 30, 1982, plus interest thereafter at the rate of $4.6126 per day, until paid, plus the costs of this action accrued and accruing.

The Court further finds that Defendant Leonard R. Baker, a/k/a Leonard Ray Baker, has disclaimed any and all right,

title, or interest in and to the real property which is the subject matter of this proceeding as shown by his Answer.

The Court further finds that there is due and owing to the County Treasurer, Craig County, Oklahoma, real estate taxes which are a lien against the property described above in the sum of $ 132.03 , plus interest according to law, and that County Treasurer, Craig County, Oklahoma, should have judgment for said amount, and that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover judgment against the Defendants Leonard R. Baker, a/k/a Leonard Ray Baker, and Diana L. Baker, a/k/a Diana Lee Baker, for the principal sum of $21,045.22, plus accrued interest of $1,159.10 as of August 30, 1982, plus interest thereafter at the rate of $4.6126 per day, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the County Treasurer, Craig County, Oklahoma, have and recover judgment for the sum of $ 132.03 as of this date, plus interest thereafter according to law for real estate taxes, but that such judgment is superior to the first mortgage lien of the Plaintiff herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the mortgage and lien of the Plaintiff herein be adjudged foreclosed

and that upon the failure of said Defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and apply the proceeds in satisfaction of Plaintiff's judgment which sale shall be subject to the real estate tax judgment of the County Treasurer, Craig County, Oklahoma. The residue, if any, shall be deposited with Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint herein are forever barred and foreclosed of any right, title, interest or claim to the real property or any part thereof.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

FRANK KEATING
United States Attorney

NANCY A. NESBITT
Assistant U.S. Attorney

KENT RYALS
Attorney for Leonard R. Baker,
a/k/a Leonard Ray Baker

ORVAN J. HANSON, JR.
Assistant District Attorney
Craig County, Oklahoma

entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL W. LEE)
)
Plaintiff,)
)
vs.) No. 83-C-117-C
)
COOK COUNTY, STATE OF ILLINOIS,)
)
Defendant.)

ORDER

Now before the Court for its consideration, sua sponte, is the petition of Michael W. Lee for a writ of habeas corpus, pursuant to 28 U.S.C. §2254. Petitioner alleges that on September 15, 1977, an information was filed against him in the District Court of Illinois, Cook County, charging him with the crime of "armed robbery, armed violence, U.U.W. (felony)." Petitioner claims that his constitutional right to a speedy trial has been violated by the failure of defendants to seek jurisdiction over his person. Petitioner asks only that the warrant and detainer be dismissed with prejudice.

It is well-established that a prisoner seeking to challenge, by means of a federal habeas corpus the validity of an untried criminal charge on which a detainer is based (as opposed to any effects on the conditions of confinement), must file his petition in the federal district court for the district wherein the charge is pending. Baity v. Ciccone, 379 F.Supp. 552 (W.D.Missouri,

S.D., 1974), (appeal dismissed 507 F.2d 717, 8th Cir. 1974). The court in Baity further concluded that it had no power to grant the relief requested:

> ...[I]n order to possess jurisdiction in a case involving a challenge to an untried criminal charge on which a detainer is based, a federal district court must possess the power to grant relief, which would entail possessing the power to direct in personam, that the pending charge be dismissed. However, a federal district court in the state and district of confinement simply has no state officer within its jurisdiction whom it can direct to dismiss the pending charges, and there is no way of enforcing any writ to that effect which might be issued.

Id., 556-57. See also Norris v. State of Georgia, 522 F.2d 1006 (4th Cir. 1975); Wingo v. Ciccone, 507 F.2d 354 (8th Cir. 1974).

However, jurisdiction by the appropriate federal court in the State of Illinois may not presently be proper, since the record does not indicate that the petitioner has exhausted his state court remedies within the State of Illinois nor has he shown such remedies to be inadequate or ineffective. Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 489-490, 93 S.Ct. 1123, 35 L.Ed.2d 443, 449 (1973).

Therefore, it is the Order of the Court that the petition herein should be and hereby is dismissed without prejudice.

It is so Ordered this 22nd day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ANTHONY J. WILLIAMS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 82-C-543-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Philard L. Rounds, Jr., Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 22 day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant United States Attorney
460 U.S. Courthouse
Tulsa, OK 74103
(918) 581-7463

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 22nd day of June, 1983

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

PETER C., a minor child, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

JEFFERY G., a minor child, by and through his natural mother and next friend, JUDY GANDRUP, individually and on behalf of all other persons similarly situated,

Plaintiff-Intervenor,

vs.

LEE MITCHELL, et al.,

Defendants.

No. 82-C-1046-E

AGREED DECLARATORY JUDGMENT

This is a class action brought under 42 U.S.C. §1983 by the class of juveniles who have been, are now, or may be detained in the Mayes County, Oklahoma, jail. Judges Whistler, Thomas and Box have been named as Defendants herein. The Plaintiff class has alleged that the Defendant Judges have detained juveniles in the Mayes County jail without judicial determinations of probable cause as required by the Fourth Amendment to the United States Constitution. All parties to this action agree that judicial determinations of probable cause are constitutionally required for extended pretrial detention and wish to settle this action. The Defendant Judges deny that they have detained juveniles without determinations of probable cause. Based upon the expressed desire of the

parties through their counsel to settle this litigation, the Court hereby enters the following Declaratory Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that:

1. The Fourth Amendment to the United States Constitution requires that children alleged to be in need of supervision or delinquent under the Oklahoma Juvenile Code shall be entitled to a prompt judicial determination of probable cause prior to extended pre-trial detention, based upon facts and circumstances which would lead a prudent person to believe that the juvenile had committed an offense. This determination must be minimally supported by reliable hearsay or sworn statements, and may not be based solely upon a prosecutor's oath. This judicial determination need not be a result of an adversary proceeding.

2. If the judicial determination of probable cause was made while issuing an arrest warrant, the magistrate shall explain the information relied upon in making that determination to the juvenile at the time of the detention hearing which is normally conducted no later than the next judicial day after the arrest of the juvenile. If the juvenile is detained without having been arrested pursuant to warrant, the magistrate shall make the judicial determination of probable cause at the detention hearing and before the juvenile is subjected to continued pretrial detention.

3. At the conclusion of the detention hearing, the juvenile shall be released from detention, unless the magistrate has found the existence of probable cause to believe

that the juvenile has committed an offense and that continued detention is necessary pursuant to any determinations required by state law. The bases of these findings shall be set forth in a written detention order.

4. Plaintiffs' remaining claims against the Defendant Judges are hereby dismissed without prejudice.

5. Inasmuch as the Court has previously certified this action as a class action under the terms of Rule 23 of the Federal Rules of Civil Procedure, counsel for the Plaintiff class shall have access upon reasonable notice to the court files of juveniles detained in the Mayes County Jail for a period of one year from entry of this judgment for the purpose of ensuring compliance herewith.

IT IS SO ORDERED THIS 22nd DAY OF June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

STEVEN A. NOVICK
Legal Aid of Western Oklahoma
980 Court Plaza
228 Robert S. Kerr Avenue
Oklahoma City, Oklahoma 73102
Telephone: 405/272-9461

ATTORNEY FOR PLAINTIFFS

ROBERT A. NANCE
Assistant Attorney General
Deputy Chief, Federal Division
112 State Capitol Building
Oklahoma City, Oklahoma 73105
Telephone: 405/525-8550

ATTORNEY FOR DEFENDANTS
WHISTLER, THOMAS AND BOX

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GRACIE A. CARTER, a/k/a GRACE A. DOWNING, and DAVID A. CARTER,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 83-C-87-E

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 21st day of June, 1983. The Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney; and the Defendants Gracie A. Carter, a/k/a Grace A. Downing, and David A. Carter, appearing not.

The Court being fully advised and having examined the file herein finds that the Defendants Gracie A. Carter, a/k/a Grace A. Downing, and David A. Carter, were served with Summons and Complaint on February 7, 1983. The Defendants have failed to answer the Complaint or otherwise plead and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a mortgage note and for foreclosure of a real property mortgage securing said mortgage note upon the following-described real property located in Craig County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots 13 and 14, Block 99,
City of Vinita, Oklahoma.

THAT Grace A. Downing, did, on the first day of December, 1977, execute and deliver to the United States of America acting through the Farmers Home Administration, her mortgage and promissory note in the sum of $13,810.00, payable in monthly installments, with interest thereon at the rate of eight (8) percent per annum.

The Court further finds that Grace A. Downing is one and the same person as the Defendant Gracie A. Carter.

The Court further finds that the Defendant Gracie A. Carter, a/k/a Grace A. Downing, made default under the terms of the aforesaid promissory note by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the above-named Defendant is indebted to the Plaintiff in the sum of $13,735.67 as unpaid principal, plus accrued interest of $1,823.56, as of February 25, 1983, plus interest accruing thereafter at the rate of $3.0105 per day, until paid, plus the costs of this action accrued and accruing.

The Defendant David A. Carter, has an interest in the above-described real property by reason of homestead rights acquired by his marriage to Grace A. Downing. Said interest is junior and inferior to the mortgage lien of the Plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant Gracie A. Carter, a/k/a Grace A. Downing in the principal sum of $13,735.67, plus accrued interest in the amount of $1,823.56, through February 25, 1983, plus interest thereafter at the rate of

$3.0105 per day, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of the previously named Defendant to satisfy the money judgment herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property herein, and apply the proceeds thereof as follows:

First:

In payment of the costs of this action, accrued and accruing, including the costs of sale;

Second:

In payment of the judgment rendered herein in favor of Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree the Defendants and all persons claiming under them since the filing of the Complaint herein, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CUSTOM AIR SYSTEMS, INC., an Oklahoma corporation, Plaintiff, vs. SPECIAL COMMODITIES DIVISION, a division of ARKANSAS-BEST FREIGHT SYSTEMS, INC., an Arkansas corporation, Defendant.	)	Case No. 82-C-763-E

DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Custom Air Systems, Inc., and hereby dismisses with prejudice to the refiling of the same, all its claims herein against the Defendant, Special Commodities Division, a division of Arkansas-Best Freight Systems, Inc., an Arkansas corporation.

Richard Blanchard
901 Atlas Life Building
Tulsa, OK 74103

Attorney for Plaintiff

APPROVED AS TO FORM:

Theodore Q. Eliot
GABLE & GOTWALS
20th Floor - Fourth National
Bank Building
Tulsa, OK 74119
(918) 582-9201

Attorneys for Defendant

Certificate of Mailing

This is to certify that on the 22nd day of June, 1983, a true and correct copy of the above and foregoing Dismissal with Prejudice was mailed to:

Theodore Q. Eliot
GABLE & GOTWALS
20th Floor - Fourth National
Bank Building
Tulsa, OK 74119

Richard Blanchard

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMIE BUTLER and BETTY BUTLER, husband and wife, and LEONARD WALLSTEN,	)	
Plaintiffs,	)	
vs.	)	No. 82-C-1052E
INTERNATIONAL HARVESTER CREDIT CORPORATION, A Delaware corporation; JERRY GILLAM d/b/a JERRY GILLAM RECOVERY SERVICE,	)	
Defendants.	)	

ORDER

THIS MATTER comes on for hearing before the undersigned United States District Judge this _____ day of June, 1983, pursuant to Plaintiffs' Application for Order Dismissing the Defendant Jerry Gillam d/b/a Jerry Gillam Recovery Service.

The Court, for good cause shown, finds that Plaintiffs' Application should be and the same is hereby granted.

IT IS THEREFORE ORDERED that Plaintiffs' causes of action contained in their Complaint filed herein are dismissed with prejudice.

/s/ JAMES O. ELLISON

United States District Judge

entered

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL MARRS Plaintiff, vs. CYCLES PEUGEOT, S.A., a foreign corporation; VERROT PERRIN, a foreign corporation and LIOTARD SURY LE EQUMPAL, a foreign corporation, Defendants.	)	No. 81-C-596-B

FILED

JUN 2 [illegible]

[illegible] Silver [illegible]

ORDER OF DISMISSAL WITH PREJUDICE

Whereas, the plaintiff, Michael Marrs, and the defendant, Cycles Peugeot, S.A., have stipulated that all questions and issues existing between these parties have been fully and completely disposed of by settlement, and have requested the entrance of an Order of Dismissal with Prejudice, and the plaintiff, Michael Marrs, specifically reserves his causes of action as against the defendants, Verrot Perrin and Liotard Sury Le Equmpal,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the cause should be and the same is hereby dismissed with prejudice as to Cycles Peugeot, S.A., and the matter fully, finally and completely disposed of hereby.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's causes of action as against the defendants, Verrot Perrin and Liotard Sury Le Equmpal are reserved.

Thomas R. Brett

HONORABLE JUDGE THOMAS BRETT

FILED

JUN 2 1983

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-362-B
	)	
FRANK R. WILLIAMS,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Frank R. Williams, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Frank R. Williams, was served with Summons and Complaint on May 18, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Frank R. Williams, for the principal sum of $1,158.33, plus interest and cost of this action at the legal rate from the date of this Judgment until paid, and costs of the action.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 21 1983

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-317-B
	)	
KENNARD J. JONES,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 20 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Kennard J. Jones, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Kennard J. Jones, was served with Summons and Complaint on May 12, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Kennard J. Jones, for the principal sum of $368.23, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 2

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-295-B
JOHNNY L. SIMMONS, Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Johnny L. Simmons, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Johnny L. Simmons, was personally served with Summons and Complaint on May 19, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Johnny L. Simmons, for the principal sum of $887.27, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 21 1983

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RUTH GADDIS,

Plaintiff,

vs.

ANGIE ROBISON, and J. E. ROBISON, individuals, d/b/a WINDSPIRIT APPALOOSAS,

Defendants.

82-C-1013-B

ORDER OF DISMISSAL

ON THIS 20 day of June, 1983, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the Defendants be and the same hereby is dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

JUDGE, UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

RON DANIELS,

Attorney for the Plaintiff,

ALFRED B. KNIGHT,

Attorney for the Defendants

entered

2841

FILED

JUN 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES T. RILEY, Plaintiff,	)	
vs.	)	No. 82-C-727-B
COBURN RESOURCES CORPORATION, an Oklahoma corporation, and RICHARD W. COBURN, Defendants.	)	

ORDER DISMISSING ACTION AND
COUNTERCLAIM WITHOUT PREJUDICE

On the foregoing Stipulation of the parties herein, Plaintiff, JAMES T. RILEY, by its attorney of record, and COBURN RESOURCES CORPORATION and RICHARD W. COBURN, by their attorney of record,

IT IS HEREBY ORDERED that the above entitled action be, and it is hereby, dismissed without prejudice to either party, and that the Counterclaim of Coburn Resources Corporation and Richard W. Coburn, be, and is hereby, dismissed without prejudice to either party.

DATED this 20th day of June, 1983.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

919/884/9087.82003/02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CANSO OIL & GAS, INC., a Delaware corporation,	)	
Plaintiff,	)	
vs.	)	No. 82-C-1131-E
EXCALIBUR OIL, INC. an Oklahoma corporation; and MAC ENERGY, INC., a Utah corporation; APPLEBY and ELLISON, an Oklahoma partnership; DAVID N. SHROFF, an individual; JIMMY D. BREWER, an individual; and DEREK A. WHITTLE, an individual,	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Stipulation of all parties to this action, IT IS HEREBY ORDERED that this action and all of the claims asserted herein by any of the parties are hereby dismissed, with prejudice to the refiling thereof.

Dated this 17 day of June, 1983.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL MARRS)
)
Plaintiff,)
)
vs.) No. 81-C-596-B
)
CYCLES PEUGEOT, S.A., a)
foreign corporation; VERROT)
PERRIN, a foreign corporation)
and LIOTARD SURY LE EQUMPAL,)
a foreign corporation,)
)
Defendants.)

FILED

JUN 2 [illegible]

[illegible] Silver

ORDER OF DISMISSAL WITH PREJUDICE

Whereas, the plaintiff, Michael Marrs, and the defendant, Cycles Peugeot, S.A., have stipulated that all questions and issues existing between these parties have been fully and completely disposed of by settlement, and have requested the entrance of an Order of Dismissal with Prejudice, and the plaintiff, Michael Marrs, specifically reserves his causes of action as against the defendants, Verrot Perrin and Liotard Sury Le Equmpal,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the cause should be and the same is hereby dismissed with prejudice as to Cycles Peugeot, S.A., and the matter fully, finally and completely disposed of hereby.

IT IS, FURTHER, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's causes of action as against the defendants, Verrot Perrin and Liotard Sury Le Equmpal are reserved.

Thomas R. Brett

HONORABLE JUDGE THOMAS BRETT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-421-C
FRED LOVETT, JR., Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 21st day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Fred Lovett, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Fred Lovett, Jr., was served with Summons and Complaint on May 23, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Fred Lovett, Jr., for the principal sum of $525.87, plus interest at the legal rate from the date of this Judgment until paid, and costs of this action.

/s/ H. Dale Cook
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

RAMSEY WINCH COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83-C-385-C
	)	
TRADEWIND INDUSTRIES, INC.,	)	
	)	
Defendant.	)	

DISMISSAL

Comes now the plaintiff, Ramsey Winch Company, and hereby dismisses the above cause with prejudice.

Dated this 21st day of June, 1983.

DYER, POWERS, MARSH & ARMSTRONG

By _____
C. Clay Roberts III
525 South Main, Suite 210
Tulsa, Oklahoma 74103
(918) 587-0141

Attorneys for Plaintiff,
RAMSEY WINCH COMPANY

CERTIFICATE OF MAILING

I, C. Clay Roberts III, certify that on the 21st day of June, 1983, a full, true and correct copy of the foregoing Dismissal was mailed to Mr. William R. Chambers, Attorney for Defendant, 2000 Johnson Drive, Suite 100, Mission Woods, Kansas 66205, with proper postage fully prepaid thereon.

_____
C. Clay Roberts III

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LESTER HAGER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 83-C-176-C
	)	
BRUCE MORINE and THE BRANIGAR ORGANIZATION, INC.,	)	
	)	
	)	
Defendants.	)	

STIPULATION OF DISMISSAL

Come now the Plaintiff, Lester Hager, the Defendant, Bruce Morine, and the Defendant, The Branigar Organization, Inc., through their counsel, pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure and stipulate that this action may be and it is hereby dismissed with prejudice as to all claims for relief and cross-claims for relief.

Dated this 20th day of June, 1983.

Patrick O'Connor
Rheam, Noss, O'Connor & Ray
400 Sinclair Building
6 East Fifth Street
Tulsa, Oklahoma 74103
Attorneys for Plaintiff Lester Hager

John Burkhardt
Boone, Smith, Davis & Hurst
900 World Building
Tulsa, Oklahoma 74103
Attorneys for Defendant, The Branigar Organization, Inc.

Sondra Fogley Houston
Rita J. Lamkin
1640 South Boston
Tulsa, Oklahoma 74119
Attorneys for Defendant Bruce Morine

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-420-E
	)	
JIMMIE J. MAJORS,	)	
	)	
Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 15 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Jimmie J. Majors, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Jimmie J. Majors, was personally served with Summons and Complaint on May 24, 1983. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $673.83, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant,

Jimmie J. Majors, in the amount of $673.83, plus costs and interest at the legal rate from the date of this Judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant U.S. Attorney

JIMMIE J. MAJORS

FILED
JUNE 21, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND HOLT GRACE and BARBARA GRACE,	)	
Plaintiffs,	)	
vs.	)	No. 82-C-672-E
OWENS-CORNING FIBERGLASS CORP., et al.,	)	
Defendants.	)	

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard, and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiffs take nothing, as against the Defendant Nicolet, Inc., that the action against Nicolet, Inc. be dismissed on the merits, and that the Defendant Nicolet recover of the Plaintiffs its costs of action.

DATED this 20th day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL V. ARTHUR,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 81-C-775-E

O R D E R

NOW on this 20 day of June, 1983, it appears that the Defendant Michael V. Arthur, has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaint against Michael V. Arthur is dismissed without prejudice.

UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

FORD MOTOR CREDIT COMPANY, Plaintiff,	)	
v.	)	No. 82-C-612-B
JASON I. FOX and STEPHEN R. RYKOFF, individually and jointly, Defendants.	)	

CONSENT DECREE

Plaintiff having filed its Motion for Leave to Enter Deficiency Judgment as appears more fully by the said Motion and prayer for relief therein, and the plaintiff and defendant Stephen R. Rykoff having agreed upon a basis for the adjudgment of the matters alleged in the Motion in the entry of a judgment in this action, and having entered into a Stipulation, original of which is being filed with the court, and due deliberation being had thereon, now, on motion of counsel for the plaintiff, it is

ORDERED, ADJUDGED and DECREED that final judgment in favor of the plaintiff and against the defendant Stephen R. Rykoff is hereby granted and ordered entered as the judgment in this action as follows: One Million Two Hundred Twenty-four Thousand Sixty Dollars and Seventy-six Cents ($1,224,060.76), plus interest at eighteen percent (18%) per annum from April 1, 1983, until paid; the further sum of Three Hundred Thirty-two Thousand Ninety-seven

Dollars ($332,097.00) as attorney fees, and costs.

Dated June 20th, 1983.

United States District Judge

APPROVED AS TO FORM:

Thomas G. Marsh
DYER, POWERS, MARSH & ARMSTRONG
525 South Main, Suite 210
Tulsa, Oklahoma 74103
918/587-0141
Attorneys for Plaintiff

Charles W. Shipley
Suite 1770
One Williams Center
Tulsa, Oklahoma 74172
918/582-1720
Attorney for Defendant,
Stephen R. Rykoff

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
June 20, 1988

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WILL F. DECKER, and BETTY JO DECKER, et al.,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 82-C-327-B

STIPULATION OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and Frank Kardos on behalf of the Defendants Decker, and Stephen Smith, Esquire, on behalf of Third-Party Defendant American Exchange Bank of Henryetta, Oklahoma, and hereby stipulate:

That in consideration of the $10,000.00 paid by the Defendants Will Decker, Betty Jo Decker, Hoyt Decker and Velma Decker to the United States of America, the United States hereby dismisses with prejudice the above-styled case and further releases all claims against John Decker and Norma Decker who are also personal guarantors of the Promissory Note which is the subject matter of this action. John Decker and Norma Decker were unnamed in this action due to previous review by the Small Business Administration.

The Defendants and Third-Party Plaintiffs as further consideration hereby dismiss with prejudice their action against

Third-Party Defendant American Exchange Bank of Henryetta, Oklahoma. The parties further agree and hereby stipulate that each of them will bear their own attorneys' fees and costs.

APPROVED AS TO FORM AND SUBSTANCE:

STEPHEN SMITH
American Exchange Bank

IVAN FRANK KARDOS
Attorney for the Deckers

PHILARD L. ROUNDS, JR.
Assistant United States Attorney
UNITED STATES OF AMERICA

entered

FILED

JUN 20

Silver

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

OCTAGON AMALGAMATED, INC.,

Plaintiff,

vs.

No. 83-C-168-B

GEARHART INDUSTRIES, INC.,

Defendant.

O R D E R

NOW on this 20th day of June, 1983, this matter comes on for hearing before the undersigned Judge on the parties' joint application to dismiss this cause with prejudice. The Court, having examined the pleadings and joint application of the parties hereto and being fully advised in the premises, finds that the joint application to dismiss this cause should be granted, as the parties hereto have come to a full and final settlement of the claims involved in the action.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by this Court that this action shall be dismissed with prejudice, each party to bear its own costs.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN 20 1983
Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN J. LANDERS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-404-C

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 20th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 20th day of June, 1983.

Assistant United States Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE	Case No. 82-01263
BILLY LEE DYE and LILIA DYE, d/b/a OKAM ENERGIES, Debtors,	M-1063-C ✓
BILLY LEE DYE and LILIA DYE, d/b/a OKAM ENERGIES, Plaintiffs,	Adversary No. 83-0143
v.	
LESLIE D. WICKHAM and DORIS WICKHAM, husband and wife, Defendants.	

ORDER

The undersigned, a Judge of this District Court, having reviewed the matter here certified, accepts the findings of fact and conclusions of law submitted by the bankruptcy judge and the Order recommended, and it is

ORDERED that Case No. C-81-75, Billy Lee Dye and Gordon Taylor, Plaintiffs, v. Leslie D. Wickham and Doris Wickham, husban and wife, Defendants, in the District Court in and for Nowata County, State of Oklahoma, is hereby remanded.

Entered ~~April~~ June 20, 1983.

United States District Judge

cc: John Price
Arthur Meyer
Clerk, District Court of Nowata County
Bruce M. Townsend

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND, 4845 South 83 East Avenue, Tulsa, Oklahoma 74145,	)	
Plaintiff,	)	
vs.	)	No. 83-C-121-E
SKIBECK PIPELINE COMPANY, INC., P. O. Box 631, Canandaigua, New York 14424,	)	
Defendant.	)	

JUDGMENT BY DEFAULT

This matter comes on before me, the undersigned Judge, for hearing this 17 day of June, 1983, upon plaintiff's Motion for Default Judgment filed herein, upon the grounds that the defendant has failed to answer or otherwise plead to the Complaint filed herein, as required by law.

The Court finds that the defendant was duly served with Summons in this case on the 10th day of May, 1983, and is wholly in default herein, and that the plaintiff should have judgment as prayed for in its Complaint filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff be, and is hereby, awarded a judgment of and from said defendant in the principal sum of $235.59, together with interest thereon at the rate of 9.59 per annum from the date of judgment until paid in full, plus an attorney's fee in the amount of $350.00, and the costs of this action, including service by private process server under Rule 4(c)(2)(C)(ii), that have accrued and will continue to accrue.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
G. L. PETERS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-109-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Philard L. Rounds, Jr., Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 16th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 17th day of June, 1983

Assistant United States Attorney

919/884/9087.82002/02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CANSO OIL & GAS, INC., a Delaware corporation,	)	
Plaintiff,	)	
vs.	)	No. 82-C-1063-E
DAVID N. SHROFF, an individual; JIMMY D. BREWER, an individual; and DEREK A. WHITTLE, an individual,	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Stipulation of all parties to this action, IT IS HEREBY ORDERED that this action and all of the claims asserted herein by any of the parties are hereby dismissed, with prejudice to the refiling thereof.

Dated this 17th day of June, 1983.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT COURT
JUDGE

FILED

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JUN 17, 1983

BILL G. McGUIRE,

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY, a corporation,

Defendant.

No. 83-C-352-E

STIPULATION FOR DISMISSAL WITH PREJUDICE

The parties hereto advise the Court that this case has been fully settled and that they stipulate that plaintiff's cause of action should be dismissed with prejudice.

ROBERT E. MARTIN
Attorney for Plaintiff

Of Hubbel Sawyer Peak & O'Neil
Attorneys for Plaintiff

Ben Franklin, of
Kornfeld Satterfield McMillin
Harmon Phillips & Upp
Attorneys for Defendant

ORDER

Upon stipulation of the parties, plaintiff's cause of action is hereby dismissed with prejudice to its refiling.

IT IS SO ORDERED this 17th day of June, 1983.

James O. Ellison
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-310-E
CARL N. POWELL, Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 17 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Carl N. Powell, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Carl N. Powell, was I was not personally served this Summons, It was personally served with Summons and Complaint on May 28, 1983. mailed to me. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $924.00, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant,

Carl N. Powell, in the amount of $924.00, plus costs and interest at the legal rate from the date of this Judgment until paid.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt
NANCY A. NESBITT
Assistant U.S. Attorney

CARL N. POWELL

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ARTHUR S. FINK, Plaintiff,	)	
-vs-	)	No. 81-C-552-E
TEXTRON, INC., a Delaware corporation, Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

It appearing to the Court by the stipulation of the parties dismissing the above-referenced litigation with prejudice and further requesting the Court to enter an order of dismissal with prejudice, and it further appearing to the Court that the matter has been fully settled, adjusted and compromised, and that the defendant Textron, Inc., has paid to the plaintiff Arthur S. Fink the amount of Seven Thousand Six Hundred and no/100 Dollars ($7,600.00) in full, total and complete settlement of all claims which plaintiff either brought or could have brought in the present litigation and further that the plaintiff has given to the defendant a release of all claims and liabilities, a copy of which is attached as Exhibit "A" to the Stipulation for Order of Dismissal; therefore,

IT IS ORDERED, ADJUDGED and DECREED that the above-referenced litigation be and hereby is dismissed with prejudice.

DATED this _____ day of June, 1983.

s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

Richard H. Goldwyn
ATTORNEY FOR PLAINTIFF

and

Oliver S. Howard
ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

DON BRATTON, d/b/a Don's Electric, Plaintiff, vs. CITY OF MIAMI, OKLAHOMA, a municipal corporation; BOOTH ELECTRIC CO., an Oklahoma corporation; CHARLES D. JARMON, individually and in his official capacity as Electrical Inspector of the City of Miami, Oklahoma and member of the Electrical Board; W. J. "BILL" HIRSCH, individually and in his official capacity as Mayor of the City of Miami, Oklahoma; LARRY J. BOOTH, PAUL M. ANDERSON, BOBBY D. BALLENGER, and RAY CURTIS, individually and in their capacity as members of the Electrical Board of the City of Miami, Oklahoma; TUNNEY GOZA, LLOYD OGLE, PAULINE WILSON, and STEVEN VOGLER, individually and in their official capacity as members of the Board of Commissioners of the City of Miami, Oklahoma Defendants.	)	No. 82-C-95-E

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiff, Don Bratton d/b/a Don's Electric, and the defendants, City of Miami, Oklahoma, Booth Electric Co., Charles D. Jarmon, W.J. "Bill" Hirsch, Larry J. Booth, Paul M. Anderson, Bobby D. Ballenger, Ray Curtis, Tunney Goza, Lloyd Ogle, Pauline Wilson, and Steven Vogler, advise the court of a settlement agreement between the parties and pursuant to Rule 41(a)(1)(ii), F.R.C.P., jointly stipulate that the plaintiff's action be dismissed with prejudice.

Dated this 16 day of June, 1983.

By _____
FRANK GREER
P. O. Box 588
Miami, Oklahoma 74354

MELVIN O. MILLER
P. O. Box 588
Miami, Oklahoma 74354
918-542-1858

RAY R. FULP, JR.
2909 N.W. 31st Street
Oklahoma City, Oklahoma 73105
405-942-8974

ATTORNEYS FOR PLAINTIFF

J. Douglas Mann
FOR ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 300
Tulsa, Oklahoma 74103
918/585-9211

and

JAMES W. THOMPSON
Suite 509
First National Bank Building
Miami, Oklahoma 74354
918/542-3362

By _____
J. Douglas Mann

Attorneys for Defendants, City of Miami, Oklahoma, Charles D. Jarmon, W. J. "Bill" Hirsch, Paul M. Anderson, Bobby D. Ballenger, Ray Curtis, Tunney Goza, Lloyd Ogle, Pauline Wilson, and Steven Vogler in their individual and official capacities and Larry J. Booth in his official capacity only

JON B. WALLIS
1717 South Cheyenne
Tulsa, Oklahoma 74119-4689
918/583-7040

By /s/ Jon B. Wallis
Jon B. Wallis

Attorney for Defendants, Booth Electric Co., and Larry D. Booth, in his individual capacity only

RDW/bk

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ORA JOHNSON,

Plaintiff,

v.

THE NATIONAL PROPERTY OWNERS INSURANCE CO., and FRED R. ALEXANDER, Agency,

Defendants.

NO. 82-C-1143-B

ORDER SUSTAINING MOTION TO DISMISS

NOW on this 8th day of June, 1983, the above captioned matter came on for hearing before this Court and all parties were present by their respective counsel of record. After considering argument of counsel, counsel for Plaintiff confessed the pending Motion for Dismissal of Fred Alexander, and upon such confession this Court sustained the Motion to Dismiss Fred R. Alexander.

Thomas R. Brett

THOMAS R. BRETT, Judge
United States District Court for the
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

JUN 16, 1983

FRANKLIN SUPPLY COMPANY, an Oklahoma corporation,	)	
Plaintiff,	)	
v.	)	No. 83-C-170-C
DK FILTERSERVICE, ApS; FILTERKOMFORT AKTIEBOLAG: NORSE MANAGEMENT CORP. A/S; TROND KRACHT; and ARNE SANNER;	)	
Defendants.	)	

ORDER FOR DEFAULT JUDGMENT

This Action comes before the Court on Plaintiff's Motion For Default Judgment and it appearing from the record that this Court has jurisdiction, that service was made, and that Defendant has failed to answer and is now in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be given for Plaintiff and against Defendant in the amount of $60,485.61 plus 12% per annum interest, plus cost of this action ~~in the amount of $_____~~ and attorney's fees in the amount of $6,000.00.

U. S. DISTRICT JUDGE

V. Bruce Thompson
Thompson & Whitehill
111 W. 5th Suite 600

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IRENE K. NOLAN,

Plaintiff,

v.

RICHARD S. SCHWEIKER, Secretary of Health and Human Services of the United States of America,

Defendant.

No. 80-C-134-C

FILED
JUNE 16, 1983

C R D E R

The Court has before it for consideration the Findings and Recommendations of the Magistrate filed on June 3, 1983, in which it is recommended that judgment be entered for the Defendant. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record herein, the Court has concluded that the final decision of the Secretary is supported by substantial evidence as required by the Social Security Act and that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is hereby Ordered that Judgment be and hereby is entered for the Defendant.

It is so Ordered this 16th day of June, 1983.

H. DALE COOK
CHIEF JUDGE

7.

entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 16 1983

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RILEY SOUTHWEST CORPORATION, Plaintiff,	)	
vs.	)	NO. 82-C-549-BT
CARTER STEEL AND FABRICATING CO., Defendant.	)	

JUDGMENT FOR ATTORNEYS' FEES AND COSTS

In keeping with the Order entered this date in reference to attorneys' fees and costs, Judgment is hereby entered in favor of the plaintiff, Riley Southwest Corporation, and against the defendant, Carter Steel and Fabricating Company, in the amount of $10,566.67 for attorneys' fees and in the amount of $1,366.75 for costs.

ENTERED this 16th day of June, 1983.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FRANK A. JONES,	)	
	)	
Defendant.	)	CIVIL NO. 82-C-1094-E

DEFAULT JUDGMENT

This matter comes on for consideration this 15th day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Frank A. Jones, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Frank A. Jones, was personally served with Summons and Complaint on November 19, 1982. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Frank A. Jones, for the principal sum of $213.64, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FIFTEEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS ($15,250.00) IN UNITED STATES CURRENCY, and ONE, ONE OUNCE FINE GOLD SOUTH AFRICAN KRUGERRAND,

Defendants.

CIVIL ACTION NO. 83-C-243-C

J U D G M E N T

THIS CAUSE, having come before this Court upon Plaintiff's Application and this Court being fully advised and having examined the file herein finds that the United States Marshal for this District seized all property defendants on April 14, 1983, pursuant to Warrant for Arrest issued by this Court, and that public notice of the seizure was given according to law.

The Court further finds that Forrest Stanley Tucker filed a claim herein on May 5, 1983, for Three Thousand Dollars ($3,000.00) in United States Currency of the above enumerated Fifteen Thousand Two Hundred and Fifty Dollars ($15,250.00) in United States Currency.

The Court further finds that no other person has intervened as claimant and answered the Complaint as required by Supplemental Rule C(6) as to defendant property Fifteen Thousand Two Hundred and Fifty Dollars ($15,250.00) in United States Currency and One, One Ounce Fine Gold South African Krugerrand,

and that the time within which to file a claim or otherwise more has expired and has not been extended.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the defendant property, Thirteen Thousand, Two Hundred and Fifty Dollars ($13,250.00) in United States Currency and One, One Ounce Fine Gold South African Krugerrand are hereby forfeited to the United States of America for the causes propounded in the Complaint herein, and it is further

ORDERED, ADJUDGED, AND DECREED that Forrest Stanley Tucker by agreement and stipulation of the parties is entitled to recover Two Thousand Dollars ($2,000.00) in United States Currency of the above enumerated Fifteen Thousand, Two Hundred and Fifty Dollars property defendant in full satisfaction of any and all claims of whatsoever nature against said property defendant, and it is further

ORDERED that the Marshal for the Northern District of Oklahoma be and is hereby directed to issue checks as follows:

Forrest Stanley Tucker and
Wesley E. Johnson $2,000.00

United States of America . . $13,250.00 less costs and expenses

and to give full possession and control of said defendant property, One, One Ounce Fine Gold South African Krugerrand, to the United States Attorney, Tulsa, Oklahoma, or his duly authorized representative, for disposition according to law.

DATED this 15th day of June, 1983.

H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

FRANK KEATING
United States Attorney

GERALD HILSHER
Assistant United States Attorney

WESLEY E. JOHNSON
Attorney for Claimant

FORREST STANLEY TUCKER
Claimant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RAYMOND ANDREW DeLANCY,)
)
Plaintiff,)
)
vs.) No. 83-C-462-C
)
JACK COWLEY,)
)
Defendant.)

ORDER

Now before the Court for its consideration, sua sponte, is the petition of Raymond A. DeLancy for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. Petitioner alleges that his constitutional rights were violated during his State Court trial because the prosecutor claimed petitioner was 36 years old, whereas petitioner claims he was only 35 years old. As his second ground, petitioner claims that his constitutional rights were violated because the District Attorney was also the attorney for a defense witness who was being sued by petitioner in a civil action. Petitioner alleges that the prosecutor made improper reference to the civil matters during closing argument. As his third ground, petitioner contends that his constitutional rights were violated when the prosecutor made improper remarks during his opening statements and the State of Oklahoma has refused to allow him access to the transcript of the Opening Statements. Petitioner has also raised nine additional grounds, all related

to the fairness of his State Court trial.

Petitioner has indicated that the first three grounds have been raised before the Court of Criminal Appeals in post-conviction proceedings and the third ground has been raised in a separate civil rights case presently pending before this Court. As to grounds 4-12, all of which appear to allege trial errors, the petitioner fails to indicate whether or not these issues were raised on direct appeal or in post-conviction proceedings in State Court, as required. Therefore, the Court must presume that they were not.

Habeas corpus in the federal courts does not serve as an additional appeal from State Court convictions. Fay v. Noia, 372 U.S. 391, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963). Federal habeas corpus relief is available to State prisoners only on denial by the State of federal constitutional rights. 28 U.S.C.A. §2254; Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963); United States ex rel. Little v. Twomey, 477 F.2d 767 (10th Cir. 1973), cert. denied, 414 U.S. 846, 94 S.Ct. 112, 38 L.Ed.2d 94; Mathis v. People of the State of Colorado, 425 F.2d 1165 (10th Cir. 1970). It is not available to review mere trial errors in criminal cases. Brinlee v. Crisp, 608 F.2d 839 (10th Cir. 1979); Pierce v. Page, 362 F.2d 534 (10th Cir. 1965). None of petitioner's twelve grounds are of federal constitutional dimensions.

Even if the petitioner had any federal constitutional claims in grounds 4-12, he has not exhausted the remedies available to him in the courts of the State of Oklahoma. Absent a showing of

unavailability or ineffectiveness of State procedures, a State prisoner is required to afford State courts the opportunity to consider and resolve claims of constitutional infirmity before raising these claims in federal court. The burden of showing exhaustion of state remedies rests on the petitioner seeking federal habeas relief. Bond v. State of Oklahoma, 546 F.2d 1369 (10th Cir. 1976) 28 U.S.C.A. §2254; Hoggatt v. Page, 432 F.2d 41 (10th Cir. 1970). Although the petitioner did pursue an unsuccessful direct appeal from the State judgment of conviction, he has apparently not pursued the State Post Conviction remedy provided by 22 O.S.A. §1080, et seq. as to grounds 4-12. Generally, the institution of post conviction action in the State sentencing court is a prerequisite of the granting of habeas relief in a federal court. Brown v. Crouse, 395 F.2d 755 (10th Cir. 1968); Omo v. Crouse, 395 F.2d 757 (10th Cir. 1968). Additionally, ground three raises no significant substantive claims which were not raised in Case Number 82-C-1021-C.

Rule 9(b) of 28 U.S.C. Section 2254 provides:

> A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits, or, if new and different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ.

Even the addition of several new allegations will not provide a basis for trying again those issues which were adequately reviewed by the courts. As was recognized in Jordan v. Steiner, 184 F.Supp. 432 (D.C.Md. 1960), aff'd 283 F.2d 515, cert. denied,

365 U.S. 852, 81 S.Ct. 818, 5 L.Ed.2d 817 (1962):

> Even though a new habeas corpus petition rehashing contentions disposed of on prior petitions adds a few new allegations on such issues, petitioner is not entitled to have them tried again.

See also Edwards v. State of Oklahoma, 436 F.Supp. 480 (D.C.Okla. 1977).

It is the position of this Court that inasmuch as the issue raised in Ground Three herein has previously been adjudicated on the merits in Case No. 82-C-1021-C, United States District Court for the Northern District of Oklahoma, the action herein constitutes a successive petition and is hereby dismissed in accordance with Rule 9(b), 28 U.S.C. Section 2254.

In addition, the remaining eleven grounds for relief must be and hereby are dismissed for the reasons cited herein.

Therefore, this Court must dismiss this action as to Grounds 1-3 for failure to raise a constitutional claim, and as to Grounds 4-12 for failure to exhaust State remedies. It should be noted, however, that Grounds 4-12 also fail to raise constitutional claims.

It is so Ordered this 15th day of June, 1983.

H. DALE COOK
Chief Judge, U. S. District Court

RCH/sl
6-6-83

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LINDA G. ADKINS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DAVID A. FITZPATRICK, JR.,	)	
	)	
Defendant.	)	No. 82-C-1138C

ORDER OF DISMISSAL

Upon the application of the plaintiff and for good cause shown, this action is dismissed with prejudice.

DATED this 14 day of June, 1983.

s/H. DALE COOK

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY D. HAYHURST,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 82-C-1194-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 14th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 14th day of June, 1983.

Assistant United States Attorney

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 82-C-1197-B
	)	
SHARON R. DONAHO,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, United States of America on behalf of the Veterans Administration, by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Sharon R. Donaho, and hereby dismiss this action without prejudice by joint stipulation.

SHARON R. DONAHO

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

83-C-481-C

GLENN E. BRAS CORPORATION, and MARY BRAS, individually, Plaintiffs,	)	
vs.	)	82-507-C
OKEMAH NATIONAL BANK, Okemah, Oklahoma, and FIRST BANK & TRUST COMPANY OF SAND SPRINGS, Sand Springs, Oklahoma, Defendants.	)	

ORDER OF DISMISSAL

This cause came on to be heard on Plaintiffs' Motion For Voluntary Dismissal of said cause as to the Defendant, Okemah National Bank, and upon consideration of said motion, it is ORDERED that this action is dismissed with prejudice as to the Defendant, Okemah National Bank, only.

DATED this 27th day of May, 1983.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. KIRBY DAVIS,

Plaintiff,

-vs-

LEROY SIPES, SR., an Individual, and HALE-HALSELL COMPANY, an Oklahoma Corporation, and SIPES FOOD MARKETS, INC., an Oklahoma Corporation,

Defendants.

NO. 83-C-107-C

STIPULATION OF DISMISSAL

COME NOW the parties, pursuant to Fed. R. Civ. P. 41 (a)(1), and hereby stipulate to Plaintiff's dismissing Defendant Hale-Halsell Company, only, in this lawsuit with prejudice to refiling in the future, with the understanding that Defendant Hale-Halsell Company shall bear its own costs incurred in this lawsuit.

Gregory P. Williams
Attorney for Plaintiff

Steve Wilkerson
Knight, Wagner, Stuart, Wilkerson & Lieber
Attorneys for Leroy Sipes, Sr., and Sipes Food Markets, Inc.

Richard M. Eldridge
Rhodes, Hieronymus, Jones, Tucker & Gable
Attorneys for Hale-Halsell Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUNE 13, 1983

CROWN ZELLERBACH CORPORATION, a Nevada Corporation,	)	
Plaintiff,	)	
vs.	)	No. 82-C-391-E
JACK S. JAMES, an individual,	)	
Defendant.	)	

JUDGMENT

THIS action came on for trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered:

IT IS ORDERED AND ADJUDGED that the Plaintiff take nothing, that the action be dismissed on the merits, and that the Defendant, Jack S. James recover of the Plaintiff, Crown Zellerbach Corporation his costs of action.

DATED at Tulsa, Oklahoma this 13th day of June, 1983.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTIRCT OF OKLAHOMA

ALBERT HACKNEY, Plaintiff, vs. WESTINGHOUSE ELECTRIC CORPORATION, TULSA AIRPORT, TULSA COUNTY AIRPORT AUTHORITY, Defendants.	)	No. 83-C-266-C

JOINT STIPULATION OF DISMISSAL
WITH PREJUDICE

Plaintiff Albert Hackney and Defendant Westinghouse Electric Corporation hereby jointly stipulate and agree, pursuant to Rule 41 (a) (1) (ii), Fed.R.Civ.P., that this cause may be, and the same is hereby, dismissed with prejudice, each party to bear its own costs, expenses and attorneys' fees.

Joseph A. Shuff, III
A Professional Law Corporation
2107 North Broadway,
Suite 301
Santa Ana, California 92706

Attorney for Plaintiff
ALBERT HACKNEY

Steven K. Balman
CONNER, WINTERS, BALLAINE
BARRY & McGOWEN
2400 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Defendant
WESTINGHOUSE ELECTRIC CORPORATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LIQUID AIR CORPORATION, a Delaware corporation,	)	
Plaintiff,	)	
v.	)	83-C-151-C
ALLIED WELDING SUPPLY, INC., an Oklahoma corporation,	)	
Defendant.	)	

CONSENT JUDGMENT

Plaintiff Liquid Air Corporation, a Delaware corporation, and defendant Allied Welding Supply, Inc., an Oklahoma corporation, have represented to the Court pursuant to a Stipulation for Consent Decree filed herein that they have reached an agreement to settle this case. By these parties' consent and pursuant to the Stipulation for Consent Judgment:

IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff have judgment against defendant Allied Welding Supply, Inc., an Oklahoma corporation, in the amount of $42,416.93 plus interest thereon at the rate of 12 percent per annum from date of judgment until paid, additional judgment in the amount of $12,300 with interest thereon at the rate of 12 percent per annum from date of judgment until paid and for reasonable attorney fees in the amount of $5,000.00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff is the owner of 164 high pressure cylinders and acetylene type cylinders, each of which is identifiable by a neck ring bearing the name "National Cylinder Gas" (NCG) or "Liquid Air Corporation". Any of such cylinders returned to plaintiff after entry of this judgment shall be credited against the judgment at the rate of $75 per cylinder.

MADE AND ENTERED IN JUDGMENT this 10th day of June 1983.

s/H. DALE COOK

H. Dale Cook, United States
District Judge

AGREED AND APPROVED:

John B. Heatly

John B. Heatly
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
2400 First National Center
Oklahoma City, Oklahoma 73102
405/232-0621
Attorneys for Liquid Air
Corporation

Jack L. McNulty

Jack L. McNulty
202 West 8th Street
Tulsa, Oklahoma 74119
918/584-4716
Attorney for Allied Welding
Supply, Inc.

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH E. FRANCIS, the Complainant, in Proper and In Forma Pauperis,	)	
	)	No. 83-C-456-E
vs.	)	
MAPCO INC.: its subsidiary MAPCO CONTROLS CO., formerly Process Controls Division,	)	
Respondent.	)	

FILED
JUNE 10 1983
JACK C. SILVER, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL

NOW ON THIS 10th day of June, 1983, the above-captioned matter comes on before the Court upon the motion of the Plaintiff for dismissal with prejudice.

WHEREUPON Plaintiff represents to the Court the parties have settled and resolved their differences and the above entitled action should be dismissed with prejudice.

IN IS THEREFORE BY THE COURT CONSIDERED, ORDERED, ADJUDGED AND DECREED that the above entitled action be and the same is hereby dismissed with prejudice.

IT IS SO ORDERED.

JAMES O. ELLISON
United States District Judge

SUBMITTED BY:

Joseph E. Francis, Plaintiff

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	U.
	)	
vs.	)	
	)	
CHARLES E. GOLDEN,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 82-C-1092-B

AGREED JUDGMENT

This matter comes on for consideration this 8th day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Charles E. Golden, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Charles E. Golden, was personally served with Summons and Complaint on May 24, 1983. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $1,011.00, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant,

Charles E. Golden, in the amount of $1,011.00, plus interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant U.S. Attorney

Charles E. Golden

CHARLES E. GOLDEN

entered

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GERRY J. TRAVIS and EULA INMAN, Plaintiffs,	)	
vs.	)	No. 82-C-1144-B
LADD PETROLEUM CORPORATION, Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

This action comes before the Court at the request of both parties pursuant to the announcement of counsel for each side that the matter has been resolved. Plaintiffs, Gerry J. Travis and Eula Inman, appear by and through their attorney of record W. E. Maddux. Defendant, Ladd Petroleum Corporation, appears by and through its counsel, William J. Wenzel of Sneed, Lang, Adams, Hamilton, Downie & Barnett. The parties announce in open court that this matter has been resolved by agreement of the parties and that judgment in favor of the Defendant and against Plaintiffs herein may be entered as follows.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment is entered in favor of Defendant and against Plaintiffs on Plaintiffs' Petition, and on Defendant's Counterclaim, and the Court determines that the oil and gas lease given by Garland E. Travis and Eula Travis to Jalmer Lyytinen, dated March 19, 1951, and recorded in Book 343, at Page 287, in the office of the County Clerk of Nowata County, Oklahoma, remains in full force and effect, by virtue of the production of oil, gas and

other minerals from said lease in commercial quantities and that said lease has been fully and prudently developed by Defendant, as a reasonably prudent operator, and that Defendant has not breached any express or implied covenant contained within the lease.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the aforementioned oil and gas lease remains in full force and effect, less certain acreage described as follows:

NE/4 of the NW/4 of the SW/4;
NW/4 of the NE/4 of the SW/4;
NE/4 of the NE/4 of the SW/4;
SW/4 of the NE/4 of the SW/4;
N/2 of the NW/4 of the SE/4 of the SW/4;
N/2 of the SE/4 of the NE/4 of the SW/4,

Section One (1), Township 26 North, Range 15 East, all situate in Nowata County, Oklahoma, containing Fifty (50) acres more or less; which acreage has been partially released by Defendant with reservation of certain rights-of-way and easements.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that each party hereto shall bear its own costs and attorneys' fees.

DONE this 8th day of June, 1983.

S/ THOMAS R. BRETT

THOMAS R. BRETT
United States District Judge

APPROVED AS TO
FORM & CONTENT:

W. E. Maddux,
Attorney for Plaintiffs

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By
William J. Wenzel,
Attorneys for Defendant

entered

F

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-374-B
	)	
MONICA R. ACKERSON,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 8 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Monica R. Ackerson, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Monica R. Ackerson, was personally served with Summons and Complaint on May 6, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Monica R. Ackerson, for the principal sum of $672.60, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

MHI:vb
4/7/83

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FRANCES VIRGINIA BROWNING, personally, and as the representative of the Heirs of CLARENCE A. BROWNING, Deceased,	)	
Plaintiff,	)	
vs.	)	No. 82-C-131-BT
FIBREBOARD CORPORATION, et al.,	)	
Defendants.	)	

O R D E R

NOW on this 9th day of June, 1983, there came on before the undersigned United States District Judge for the Northern District of Oklahoma the parties' Stipulation for Dismissal with Prejudice. The Court finding that the parties have compromised and settled their differences, finds that an Order of dismissal with prejudice should be issued and it is hereby ordered that the above-entitled action by the Plaintiff against the Defendant, Pittsburgh Corning Corporation, only, is hereby dismissed with prejudice, the rights to the bringing of a future action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

LAW OFFICES
UNGERMAN, CONNER & LITTLE
MIDWAY BLDG.
2727 EAST 21 ST.
SUITE 400
P. O. BOX 2099
TULSA, OKLAHOMA
74101

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-35-B
	)	
LARRY D. HAYHURST,	)	
	)	
Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 8 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Larry D. Hayhurst, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Larry D. Hayhurst, was served with Summons and Complaint. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $1,410.00 , plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant, Larry D. Hayhurst, in the amount of $1,410.00, plus costs and

interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant U.S. Attorney

LARRY D. HAYHURST

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE MALL, Individually and INTERNATIONAL BUSINESS AIRCRAFT, INC., an Oklahoma Corporation; on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 83-C-252-B
GARRETT CORPORATION, a California Corporation; and MITSUBISHI AIRCRAFT INTERNATIONAL, INC., a Texas Corporation,	)	
Defendants.	)	

FILED

JUN - 9 1983

ORDER OF DISMISSAL WITHOUT PREJUDICE

NOW ON THIS 9 day of ~~May~~ June, 1983, in consideration of the Stipulation of the parties, Plaintiffs' action against the Defendant, Mitsubishi Aircraft International, Inc., is hereby dismissed, without prejudice.

Thomas R. Brett
UNITED STATES DISTRICT JUDGE

APPROVED:

Pray, Walker, Jackman, Williamson & Marlar

By Floyd L. Walker

Floyd L. Walker
Attorney for Plaintiffs
2200 Fourth National Building
Tulsa, Oklahoma 74119
918/584-4136

Fulbright & Jaworski

By _____
L. S. Carsey
Attorney for the Defendant
Mitsubishi Aircraft International, Inc.
Bank of the Southwest Building
Houston, Texas 77002

CERTIFICATE OF MAILING

I, Floyd L. Walker, hereby certify that a true, exact and correct copy of the foregoing Order of Dismissal Without Prejudice was mailed, postage prepaid this 9th day of June, 1983 to:

Mr. A. T. Elder, Jr.
Stewart & Elder
621 North Robinson, Suite 560
Oklahoma City, Oklahoma 73102
Attorney for Defendant,
Garrett Corporation

_____
Floyd L. Walker

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BOBBIE L. FINLEY,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 83-C-185-B

ORDER

Now on this 8th day of June, 1983, it appears that the Defendant in the above-captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaint against Defendant, Bobbie L. Finley, be and is dismissed without prejudice.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JEAN L'AQAURIUS,

Plaintiff,

v.

WILLIAM WHISTLER, et al.,

Defendants.

No. 82-C-1133-BT

FILED

JUN 8 1983

Silver, Clerk

O R D E R

Before the Court is plaintiff's "Notice of Objection." Under the lenient standard applied to pro se pleadings as set forth in Haines v. Kerner, 404 U.S. 519, 520 (1972), the Court deems plaintiff's pleading to be a motion to reconsider the Court's order of May 19, 1983 and/or a motion for new trial.

Essentially, plaintiff objects to this Court rendering its May 19, 1983 order since plaintiff had submitted prior thereto a "Notice of Disqualification" of all federal judges in Oklahoma. As the Court noted previously, there exists no valid factual basis for the disqualifications.

Further, the Court finds its May 19, 1983 order was responsive to the issues raised in plaintiff's pleadings and addressed the merits of plaintiff's claims.

IT IS THEREFORE ORDERED plaintiff's "Notice of Objection," deemed a motion to reconsider and/or motion for new trial is overruled.

ENTERED this 8th day of June, 1983.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FLORAFAX INTERNATIONAL, INC., an Oklahoma corporation, Plaintiff,	)	
vs.	)	No. 83-C-308 C
RAY GANO, d/b/a FLOWERS BY GANO and d/b/a GANO FLOWER BOUTIQUE and d/b/a UTAH FLORES de GANO, Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, pursuant to Rule 41 (a) (1) (i) and herewith gives notice of dismissal of the above-styled and numbered action, Defendant herein not having served an Answer or a Motion for Summary Judgment upon the Plaintiff.

James R. Elder of
TALIAFERRO, MALLOY & ELDER
Attorneys for Plaintiff
1924 S. Utica, Suite 820
Tulsa, Oklahoma 74104
(918) 749-6692

CERTIFICATE OF MAILING

I, JAMES R. ELDER, hereby certify that on the date of filing the above and foregoing NOTICE OF DISMISSAL, I deposited a true and correct copy of same into the United States Mail with proper postage thereon fully prepaid to: MR. RAY GANO, d/b/a GANO FLOWER BOUTIQUE and d/b/a UTAH FLORES de GANO, 819 South Central Avenue, Phoenix, Arizona 85004.

JAMES R. ELDER

FILED

JUN 8 1983

Jack C. Silver, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-198-C
RAYMOND C. BURGESS, Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 7th day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Philard L. Rounds, Jr., Assistant United States Attorney, and the Defendant, Raymond C. Burgess, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Raymond C. Burgess, was personally served with Summons and Complaint on March 14, 1983. The Defendant has not filed his Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against him in the amount of $1,280.00, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant,

Raymond C. Burgess, in the amount of $1,280.00, plus interest at the legal rate from the date of this Judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PHILARD L. ROUNDS, JR.
Assistant U.S. Attorney

RAYMOND C. BURGESS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 8 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ROBERT E. THURSTON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 82-C-548-C

ORDER

Now on this 17th day of June, 1983, it appears that the Defendant in the above-captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED, that the Complaint against Defendant, Robert E. Thurston, be and is dismissed without prejudice.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 7 1983

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

QUARLES DRILLING CORPORATION, an Oklahoma corporation, Plaintiff,	)	
vs.	)	No. 81-C-430-B
AMINOIL USA, INC., a Delaware corporation, Defendant and Third-Party Plaintiff,	)	
vs.	)	
REACTION CHEMICAL ENTERPRISES, INC., Third-Party Defendant.	)	

ORDER AND JUDGMENT
AGAINST AMINOIL USA, INC.

There comes on for consideration the Stipulation for Judgment filed by Quarles Drilling Corporation, plaintiff, and Aminoil USA, Inc., defendant, and the Court having considered the Stipulation and being fully advised in the premises, it is ORDERED that the Stipulation be granted and the Court therefore finds and ORDERS that judgment be entered as follows:

1. Quarles Drilling Corporation is a corporation organized and existing under the laws of the state of Oklahoma, with its principal place of business located in Tulsa, Oklahoma.

2. Aminoil USA, Inc. is a corporation organized and existing under the laws of the state of Delaware, with its

principal place of business located in Houston, Texas.

3. This is a civil action where the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between citizens of different states. Therefore, the jurisdiction of this Court is proper under 28 U.S.C. §1332. Venue is proper under 28 U.S.C. §1391.

4. On or about December 25, 1979, Quarles Drilling Corporation submitted to Aminoil USA, Inc., a Drilling Bid Proposal and Day Work Drilling Contract which was executed by the parties on or about January 15, 1980, wherein Quarles Drilling Corporation was employed by Aminoil USA, Inc. to furnish equipment and labor in order to drill the Aminoil State 8 No. 1 Comm. Well in Eddy County, New Mexico.

5. Pursuant to paragraphs 14.2 and 14.3 of the contract, Aminoil USA, Inc. became obligated and responsible, from whatsoever cause, for any and all damage to or destruction of Quarles Drilling Corporation's in-hole equipment.

6. The drill pipe owned by Quarles Drilling Corporation and used and employed in the drilling of the aforementioned well became damaged and became no longer usable by Quarles Drilling Corporation such that Quarles Drilling Corporation has been damaged in the amount of $120,000, representing the value of the pipe less its salvage value, for which damages Aminoil USA, Inc. is liable to Quarles Drilling Corporation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that plaintiff Quarles Drilling Corporation shall recover of the defendant Aminoil USA, Inc., the sum of $120,000, each party herein to bear its own costs and attorneys' fees.

DATED this 6th day of June, 1983.

THOMAS R. BRETT, Judge
United States District Court
Northern District of Oklahoma

APPROVED AS TO FORM AND CONTENT:

Sidney G. Dunagan,
Attorney for Plaintiff,
Quarles Drilling Corporation

Jack D. Bryant,
Attorney for Defendant,
Aminoil USA, Inc.

entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN - 7 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

READING & BATES PETROLEUM CO., a Texas corporation,

Plaintiff,

vs.

PENNACO RESOURCES CORPORATION, a Delaware corporation,

Defendant.

Case No. 83-C-211-B ~~C 83-1304~~

STIPULATION OF DISMISSAL

COME NOW the parties, Plaintiff and Defendant, pursuant to Fed. R. Civ. P. 41(a)(1)(ii) and stipulate that the above-styled action shall be, and hereby is, dismissed without prejudice with each party to bear their own costs herein.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH & NELSON, INC.

By Donald L. Kahl
Kent L. Jones
Donald L. Kahl

4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

ATTORNEYS FOR PLAINTIFF

JONES & EVANS

By
Bruce Jones
320 South Boston Building
Suite 1134
Tulsa, Oklahoma 74103
(918) 582-0187

ATTORNEY FOR DEFENDANT

CERTIFICATE OF HAND DELIVERY

I hereby certify that on this 1st day of June, 1983, a true and correct copy of the above and foregoing document was hand delivered to Bruce Jones, 320 South Boston Building, Suite 1134, Tulsa, Oklahoma, 74103.

Donald L. Kahl

Donald L. Kahl

entered

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 7 1983

Jack Silver, Clerk

FLEET CONTROL SERVICES, INC., a Florida corporation,

Plaintiff,

vs.

WEH, INC., an Oklahoma corporation, MR. W. E. HOWELL, and MRS. W. E. HOWELL,

Defendants.

Case No. 82-C-1206-B

J U D G M E N T

THIS MATTER having come before the Court on the Plaintiff's Motion For Summary Judgment, the Court having reviewed the pleadings and other matters of record and having heard the stipulations of counsel,

FINDS:

1. That this Court has subject matter jurisdiction.

2. That Summons herein was duly issued, served and returned according to law and that this Court has in personam jurisdiction over the Defendants, WEH, Inc., Mr. W. E. Howell and Mrs. W. E. Howell, and is the proper venue.

3. That there is no material issue of fact and, the Plaintiff is entitled to Judgment according to its prayer; and it is, therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiff be and it is hereby granted Judgment against the Defendants, and each of them, in the principal sum of $125,223.44 plus pre-judgment interest accrued at the rate of Eighteen percent (18%) per annum in the amount of $55,235.55, post-judgment interest accruing in the amount provided by law, the costs of this action ($67.00) and a reasonable attorney's fee in the amount of TWO THOUSAND AND NO/100 DOLLARS ($2,000.00).

DONE this 6th day of June, 1983.

UNITED STATES DISTRICT JUDGE

APPROVED:

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

BY: _____
SAM G. BRATTON II
RICHARD H. FOSTER
1000 Atlas Life Building
Tulsa, Oklahoma 74103
(918) 582-1211
Attorneys for Plaintiff
Fleet Control Services, Inc.

APPROVED AS TO FORM:

JOHN B. JARBOE & ASSOCIATES

BY: _____
JOHN B. JARBOE
1210 Mid-Continent Building
Tulsa, Oklahoma 74103
(918) 582-6131
Attorneys for Defendants
WEH, Inc., Mr. W. E. Howell,
and Mrs. W. E. Howell

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C370-E
	)	
PHILLIP S. BAILEY,	)	
	)	
Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 7th day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 7th day of June, 1983.

Assistant United States Attorney

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN - 6 1983

U.S.D.

UNITED STATES OF AMERICA and ANITA M. VAUGHN, Special Agent, Internal Revenue Service, Petitioners, vs. MAGER MORTGAGE COMPANY and JON L. WILLIAMS, Assistant Vice President, Respondents.	CIVIL ACTION NO. 83-C-240-E

ORDER DISCHARGING RESPONDENTS AND DISMISSAL

ON THIS 10th day of June, 1983, Petitioners' Motion to Discharge Respondents and for Dismissal came for hearing and the Court finds that Respondents have now complied with the Internal Revenue Service Summons served upon them November 1, 1982, that further proceedings herein are unnecessary and that the Respondents, Mager Mortgage Company and Jon L. Williams, should be discharged and this action dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT that the Respondents, Mager Mortgage Company and Jon L. Williams, be and they are hereby discharged from any further proceedings herein and this cause of action and Complaint are hereby dismissed.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANNA M. MILLER,

Plaintiff,

v.

RICHARD S. SCHWEIKER, Secretary of Health and Human Services,

Defendant.

No. 82-C-642-C

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed on May 24, 1983 in which it is recommended that this case be remanded to the Secretary for further administrative proceedings. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the matters presented to it, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

Accordingly, it is Ordered that this case be remanded to the Secretary for the purpose of re-evaluation of Plaintiff's disability pursuant to 20 CFR § 404.1520 and for the purpose of hearing additional evidence, including the testimony of a vocational expert or other specialists if the Secretary, in making the sequential evaluation of disability

as required by the regulations determines that such vocational testimony should be heard, or if Plaintiff desires to submit evidence on the vocational issue.

Dated this 6th day of June, 1983.

H. DALE COOK
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COATING LABORATORIES INC., Plaintiff,	)	
vs.	)	CASE NO. 82-C-713-C
ENERGY MANAGEMENT AND CONSERVATION, INC., and ALBERT BIANCULLI, Defendants.	)	

NOTICE OF DISMISSAL

TO:

NOTICE IS HEREBY GIVEN that Coatings Laboratories, Inc., the above named Plaintiff, elects to dismiss, without prejudice, the above entitled action pursuant to Rule 41 (a) (1) of the Federal Rules of Civil Procedure and hereby files this Notice of Dismissal without Prejudice before service by the adverse party of either an Answer or a Motion for Summary Judgment.

DATED this 6th day of June, 1983.

By Thomas R. Crook
Thomas R. Crook
Attorney for Plaintiff
6363 E. 31st Street
Tulsa, OK 74135

CERTIFICATE OF MAILING

I, Thomas R. Crook, do hereby certify that on this _____ day of _____, 1983, I mailed a true and correct copy of the above and foregoing Notice of Dismissal to:

with proper postage thereon, fully prepaid.

Thomas R. Crook
Thomas R. Crook

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN - 3 1983

U. S. DISTRICT COURT

COLUMBUS STEEL SUPLY COMPANY, an Ohio corporation, d/b/a COLUMBUS STEEL SUPPLY,

Plaintiff,

vs.

B. J. SUDDERTH,

Defendant.

NO. 82-C-1150-B

JOURNAL ENTRY OF JUDGMENT

This matter comes before the Court on plaintiff's request for entry of default judgment. The Court, having considered the request and affidavits submitted by plaintiff, finds that this is an action for recovery of amounts due on a promissory note and now in default. Further, the Court finds the defendant was properly served on December 13, 1982, by process server leaving a copy of the summons and complaint with Mrs. B.J. Sudderth, wife of the defendant, at their residence at 11107 East 98th Street North, Owasso, Oklahoma. Attorney for the plaintiff contacted defendant's attorney by telephone on January 17, 1983, at which time the attorney for the defendant requested a copy of the complaint. A copy of the complaint was sent to the attorney. No pleadings have been filed by the defendant, and the answer to the complaint was due January 12, 1983.

The Court further finds that plaintiff is a corporation incorporated under the laws of the State of Ohio and having its principal place of business in Ohio. Defendant is a citizen of

the State of Oklahoma. On January 6, 1982, the defendant executed and delivered to plaintiff a promissory note with principal sum of $66,920.00, plus interest at the rate of 20 percent per annum. Payments thereon were to be made in the amount of $13,384.00 on January 20, 1982, and $13,384.00 plus interest on the 20th day of each month thereafter until paid in full. The Court finds that the defendant is and has been in default on payment of the promissory note since March 21, 1982, and the remaining balance of the note is $53,536.00. The Court further finds plaintiff is entitled to recover costs of $132.94 and a reasonable attorney's fee of $1,875.00.

The Court hereby orders that the plaintiff have and recover from the defendant, B.J. Sudderth, the sum of $53,536.00, with interest thereon at the rate of 20 percent per annum, from March 21, 1982 until paid, together with costs in the sum of $132.94, and a reasonable attorney fee of $1,875.00.

ENTERED this 2nd day of June, 1983.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

FILED

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-348-B
	)	
SANDRA J. MURPHY,	)	
	)	
Defendant.	)	

AGREED JUDGMENT

This matter comes on for consideration this 3rd day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Sandra J. Murphy, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Sandra J. Murphy, was personally served with Summons and Complaint on April 26, 1983. The Defendant has not filed her Answer but in lieu thereof has agreed that she is indebted to the Plaintiff in the amount alleged in the Complaint and that Judgment may accordingly be entered against her in the amount of $1,313.29, plus interest at the legal rate from the date of this Judgment until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover Judgment against the Defendant,

Sandra J. Murphy, in the amount of $1,313.29, plus interest at the legal rate from the date of this Judgment until paid.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMFRICA

FRANK KEATING
United States Attorney

Nancy A. Nesbitt

NANCY A. NESBITT
Assistant U.S. Attorney

Sandra J. Murphy

SANDRA J. MURPHY

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM M. HACKETT, Plaintiff, vs. READING & BATES PETROLEUM COMPANY, et. al., Defendants.	)	No. 83-C-468-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

Notice is hereby given that WILLIAM M. HACKETT, the above named plaintiff, hereby dismisses the above entitled action without prejudice to refiling same, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, subject to the plaintiff's right to file a Motion for costs and attorney's fees as the prevailing party under the authority of Maher v. Gagne, 448 U.S. 122 (1980).

Plaintiff would certify that this Notice of Dismissal has been filed with the Clerk of the Court before service by any defendant of either an Answer or a Motion for Summary Judgment.

DATED this 3rd day of June, 1983.

D. GREGORY BLEDSOE
Attorney for Plaintiff
1515 South Denver
Tulsa, Oklahoma 74119
(918) 599-8118

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing instrument was sent by United States mail with proper postage prepaid thereon to: William Anderson, Attorney at Law, 1000 Atlas Life Building, Tulsa, Oklahoma 74103.

D. GREGORY BLEDSOE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MANUEL DIAZ MUNOZ, Plaintiff,	)	
vs.	)	No. 81-C-478-E
FRED E. COOPER, et al., Defendants.	)	

FILED
JUNE 3, 1983

O R D E R

There being no response to the Defendants' motion to dismiss, and more than ten (10) days having passed since the filing of the motion, and no extension of time having been sought by Plaintiff, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the motion. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendants' motion to dismiss is therefore granted.

DONE this 3rd day of June, 1983.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-349-E
	)	
RICHARD F. KEARNS,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 29 day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Richard F. Kearns, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Richard F. Kearns, was personally served with Summons and Complaint on April 27, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Richard F. Kearns, for the principal sum of $2,037.60, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

SANGUINE, LTD.,

Plaintiff,

v.

SANFORD P. BRASS,

Defendant.

Case No. CIV-82-C-1008E

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, and pursuant to an agreement in settlement of the parties, plaintiff Sanguine, Ltd. hereby dismisses this action with prejudice, each party to bear its own costs.

Respectfully submitted,

HALL, ESTILL HARDWICK, GABLE,
COLLINGSWORTH & NELSON, P.C.

Kent L. Jones
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

ATTORNEYS FOR PLAINTIFF

WATSON, McKENZIE & MORICOLI

R. Paul Wickes
1900 Liberty Tower
Oklahoma City, Oklahoma 73102

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 3 1983

Jack C. Silver, Clerk
U. S. DISTRICT COURT

BOBBIE J. BLACK, on behalf of herself and others similarly situated,	)	
Plaintiff,	)	
vs.	)	No. 81-C-422-E
INDUSTRIAL UNIFORM & TOWEL SUPPLY, INC.,	)	
Defendant.	)	

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Bobbie J. Black, and the Defendant, Industrial Uniform & Towel Supply, Inc., advise the Court of a settlement agreement between the parties and pursuant to Rule 41(a)(1)(ii), F.R.C.P., jointly stipulate that the Plaintiff's action be dismissed with prejudice, with each party to pay its own costs and attorneys fees.

Dated this 3rd day of June, 1983.

D. GREGORY BLEDSOE
1515 South Denver
Tulsa, Oklahoma 74119
(918) 599-8118

Attorney for Plaintiff

J. DOUGLAS MANN
ROSENSTEIN, FIST & RINGOLD
525 Suth Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SYSTEMS AND PROGRAMMING RESOURCES, INC., a corporation,	)	
Plaintiff,	)	
v.	)	No. 81-C-454-E
DELMAR CLARK, ZETA CLARK and JOHNSON PROGRAMMING SERVICES, INC., a corporation,	)	
Defendants.	)	

JUDGMENT

This action having been commenced on the first day of September, 1981, and personal service having been made on each of the Defendants, and each Defendant having entered their appearance and having filed their respective answers, the Defendant, Johnson Programming Services, Inc., a corporation, on April 27, 1983, made an offer to allow judgment in the amount of twelve thousand five hundred dollars ($12,500.00) to be entered against it, and on the same date Defendants, Delmar Clark and Zeta Clark, made an offer to allow judgment to be taken against them jointly and severally in the amount of seventeen thousand five hundred dollars ($17,500.00) and such offers were accepted in writing by the Plaintiff on May 2, 1983, and Plaintiff having moved that judgment be entered pursuant to Rule 68 of the Federal Rules of Civil Procedure, the Court finds that it is proper that judgment be entered.

IT IS THEREFORE ADJUDGED, that judgment be entered generally in favor of the Plaintiff and against the Defendant, Johnson Programming Services, Inc., in the amount of twelve thousand five

hundred dollars ($12,500.00) and against the Defendants, Delmar Clark and Zeta Clark, jointly and severally, in the amount of seventeen thousand five hundred dollars ($17,500) plus interest as provided by law including Plaintiff's attorneys' fees and costs accrued at the time of the offer.

DATED ~~May~~ June 3rd, 1983.

Jack C. Silver, Clerk
United States District Court
for the Northern District of
Oklahoma

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
6-3-83

D & H PETROLEUM MARKETERS, INC., an Oklahoma Corporation, JOE LEE INVESTORS, a partnership, DELBERT LEE JOHN PINION, JOHN L. HORNE, and DAVID FIKE, Plaintiffs, VS. FREEDOM OIL & GAS, INC. an Oklahoma corporation, CHERRYVALE WELL SERVICE, INC., a Kansas corporation, CO-KAN OIL & GAS, INC., a Colorado corporation, JOHN R. HOUSEL, RON CURRAN, JOHN CAMPBELL, WAYNE MOORE, LARRY FORSHEE, TIM HOUSEL HARRY CUNNINGHAM, KEN DARLING STAN KARSTETTER, and JAMES BOLT, Defendants.	Civil Action No: 81-C-888-E Complaint for violation of security laws and damages

DEFAULT JUDGMENT

NOW on this 22nd day of March, 1983, Plaintiffs' Motion for Default Judgment, previously filed herein on January 5, 1983, against the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter, comes on for hearing. The Plaintiffs appear by and through their attorneys of record, Jay O. Gregg and Jack N. Herrold. The Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter, appear by and through their attorney of record,

Michael L. Fought. The Defendants, James Bolt, Harry Cunningham and Larry Forshee appear not, for the reason that Plaintiffs' Motion for Default Judgment was not issued or directed to or upon such Defendants. The Defendants, John Campbell and Wayne Moore, appear not having been previously dismissed without prejudice pursuant to the Court's Order entered on September 14, 1982. Thereupon the Court, having heard statements of counsel of record, having examined the Plaintiffs' Motion for Default Judgment and Brief in Support thereof, having examined the files and records of this case and being fully advised in the premises finds and orders the following.

THE COURT FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that on September 14, 1982 this Court ordered that:

1. All discovery shall be completed on or before February 15, 1983; and,

2. All motions of any kind must be filed of record before February 28, 1983; and,

3. Final Pre-Trial shall be held on March 24, 1983; and,

4. The parties shall submit the proposed jury instructions and trial briefs on or before April 1, 1983; and,

5. This case is set for trial by jury on the jury docket of April 18, 1983 at 9:30 o'clock A.M.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs filed their Motion for Default Judgment and Brief in Support thereof on January 5, 1983.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that no response to the Plaintiffs' Motion for Default Judgment has been filed by any of the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran or Stan Karstetter.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the record of this case reflects that the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran or Stan Karstetter have, either maliciously or intentionally, continually obstructed discovery of this case and have prevented Plaintiffs from obtaining discovery by February 15, 1983 as previously ordered by this Court.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs should be and they are hereby awarded judgment against the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter, and each of them jointly and severally, on all of the Plaintiffs' causes of action alleged and stated in their original complaint and

amended complaint herein for the amount stated in Exhibit "A" of the Plaintiffs' original complaint, to-wit:

1. For and in favor of the Plaintiff, D & H Petroleum Marketers, Inc. the principal sum of $68,600.00, together with interest thereon at the rate of 10% per annum from January 15, 1981 until date of judgment; and,

2. For and in favor of Joe Lee Investors the principal sum of $56,864.68, together with interest thereon at the rate of 10% per annum from July 30, 1980 until date of judgment; and,

3. For and in favor of Delbert Lee the principal sum of $14,330.00, together with interest thereon at the rate of 10% per annum from July 30, 1980 until date of judgment; and,

4. For and in favor of John Pinion the principal sum of $16,210.00, together with interest thereon at the rate of 10% per annum from July 30, 1980 until date of judgment; and,

5. For and in favor of John L. Horne the principal sum of $43,650.00, together with interest thereon at the rate of 10% per annum from November 28, 1980 until date of judgment; and,

6. For and in favor of David Fike the principal sum of $13,720.00, together with interest thereon at the rate of 10% per annum from July 30, 1980 until date of judgment.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs should be and they are hereby awarded judgment against the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter, and each of them jointly and severally, attorney fees, to be set by the Court upon appropriate motion, costs and expenses in accordance with a verified statement to be submitted by counsel for Plaintiffs within ten (10) days of the date of this Order for determination by the Clerk of the District Court.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs should be and they are hereby awarded judgment against the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter, and each of them jointly and severally, interest upon the judgment at the rate of 8.72% per annum from date of judgment until fully paid.

THE COURT FURTHER FINDS AND IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the law precludes this Court from awarding punitive damages on this Default Judgment and the Plaintiffs should be and they are hereby denied judgment for punitive damages against the Defendants, Freedom Oil & Gas, Inc., Cherryvale Well Service, Inc., Co-Kan Oil & Gas, Inc., John R. Housel, Ken Darling, Tim Housel, Ron Curran and Stan Karstetter.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARY ALICE ATTEBERRY,

.....Plaintiff,

v.

JOANNE JACOBS and
BARBARA BOX,

.....Defendants.

No. 81-C-544-E

NOTICE OF DISMISSAL WITHOUT PREJUDICE

COMES NOW The Plaintiff and hereby dismisses her cause of action against the Defendants, JOANNE JACOBS and BARBARA BOX, without prejudice as to the filing of any future action, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure.

DATED this 3rd day of June, 1983.

MARY ALICE ATTEBERRY

JAMES C. LINGER
Counsel for Plaintiff

1710 South Boston Avenue
Tulsa, Oklahoma 74119
(918) 585-2797

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of June, 1983, I mailed a true and correct copy of the above and foregoing instrument to:

GRAYDON DEAN LUTHEY, JR., ESQ.
JONES, GIVENS, GOTCHER, DOYLE, BOGAN, INC.
201 West Fifth Street, Suite 400
Tulsa, Oklahoma 74103

with proper postage thereon.

JAMES C. LINGER
Counsel for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARLA JUNE MORANG,

Plaintiff,

vs.

S. R. MONEY, Individually and as Officer of the Tulsa Police Department of the city of Tulsa, et al.,

Defendants.

No. 82-C-570-E

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

The Court has before it the motion of the Defendant City of Tulsa to dismiss pursuant to Rule 37 D of the Federal Rules of Civil Procedure. In support of its motion, the Defendant argues that the Plaintiff has failed to answer interrogatories propounded on July 15, 1982 and has failed to ask for a protective order; that the Plaintiff has failed to respond to the Order of the Court of January 25, 1983 compelling discovery in which the Court ordered the Plaintiff to comply within fifteen (15) days; and that the Plaintiff has failed to comply with the Order of the Court issued on February 16, 1983 directing the Plaintiff to inform the Court within twenty (20) days of her intention to proceed pro se or to obtain counsel in the case.

Rule 37 D allows the Court to make such Orders as are just when a party fails to respond to interrogatories properly propounded. The Rule allows the Court to take action authorized under paragraphs A, B and C of Rule 37 B(2). Rule 37 B allows the Court to dismiss an action or proceeding for failure to comply with an Order of the Court.

Dismissal under Rule 37 is a drastic penalty which ordinarily

1/

should be imposed only in extreme circumstances. Israel Aircraft Industries, Ltd. v. Standard Precision, 559 F.2d 203 (2nd Cir. 1977); Savola v. Webster, 644 F.2d 743 (8th Cir. 1981). The Plaintiff in this case however has made it impossible for her attorneys to respond to Orders of the Court. Plaintiff has been unavailable to her attorneys, has contacted them sporadically and has failed to respond to Orders compelling discovery after sufficient notice. The Defendant's interrogatories were forwarded to the Plaintiff in July, 1982 by her attorneys and she was notified that they needed to be answered within two weeks. In October, 1982, the Plaintiff called her attorney's office at which time she informed her attorneys she was living in California but was planning to return to Oklahoma. The Plaintiff's attorneys could not contact her until the first part of January, 1983 at which time she appeared at her attorney's office. On the 29th of April, 1983, the Plaintiff called her attorneys and advised them she desired to retrieve her file. Plaintiff signed and acknowledged receipt of her file from Oliver & Evans, Inc. and acknowledged the receipt of the Order of the Court dated February 16, 1983 allowing the withdrawal of her attorneys conditioned upon contacting the Court within twenty (20) days. Plaintiff has not actively participated in the prosecution of her case since the filing of her complaint on May 20, 1982. It would be inequitable to subject the Defendant to further delay in this case as even the most rudimentary discovery has yet to be accomplished.

The Court finds that the Plaintiff has failed to respond to discovery requests of the Defendant and has wholly failed to respond to Orders of the Court compelling discovery and directing the Plaintiff's appearance before the Court. For the above reasons, the Court

regretfully finds that it must dismiss this action with prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the motion of the Defendant City of Tulsa be and hereby is granted.

IT IS FURTHER ORDERED that the complaint be and hereby is dismissed with prejudice.

ORDERED this 1st day of June, 1983.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL L. YOUNG,

Plaintiff,

vs.

SHERIFF FRANK THURMAN, TULSA COUNTY COMMISSIONERS, et al.,

Defendants.

No. 82-C-1142-E

O R D E R

There being no response to the Defendants' motion to dismiss, and more than ten (10) days having passed since the filing of the motion, and the Court having notified the Plaintiff that a response must be made on or before May 16 and no such response having been made, and no extension of time having been sought by Plaintiff, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the Defendants' motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

Defendants' motion to dismiss is therefore sustained.

DONE this 1st day of June, 1983.

James O. Ellison
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

entered

FILED

JUN 2 1983

Jack C. Silver, Clerk

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-296-B
	)	
GEORGE R. ROBERTS,	)	
	)	
Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 2nd day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing was served on each party by mailing the same to the [illegible] on the 2d day of June, 1983.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT IN AND FOR

THE NORTHERN DISTRICT OF OKLAHOMA

MORREL, HERROLD & WEST, INC., an Oklahoma Professional Corporation,	)	
Plaintiff,	)	
vs.	)	No. 83-C-305-B
JERRY L. MIZE, CAROLE N. MIZE, and PACER PHENIX CORPORATION, a Kansas Corporation,	)	
Defendants.	)	

JUNE 2, 1983
JACK C. Silver, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT BY CLERK

The Defendants Jerry L. Mize and Carole N. Mize having failed to plead or otherwise defend in this action and their default having been entered,

Now, upon application of the Plaintiff and upon Affidavit that Defendants are indebted to Plaintiff in the sum of $133,326.90; that Defendants have been defaulted for failure to appear and that Defendants are not infants or incompetent persons, and are not in the military service of the United States, it is hereby

ORDERED, ADJUDGED AND DECREED that Plaintiff recover of Defendants the sum of $133,326.90, (with interest at the rate of eighteen percent (18%) per annum from the 2nd day of June, 1983.)

Clerk

DATED: June 2, 1983

PROMISSORY NOTE

$103,872.61

November 5, 1981
Tulsa, Oklahoma

ON DEMAND, or one (1) year after date, PACER PHENIX CORPORATION and JERRY L. MIZE, as Makers, promise to pay to the order of MORREL, HERROLD, & WEST, INC., at Tulsa, Oklahoma, or at such other place as the Holder hereof may designate in writing, the sum of ONE HUNDRED THREE THOUSAND EIGHT HUNDRED SEVENTY-TWO AND 61/100 DOLLARS ($103, 872.61), together with interest thereon at the rate of Eighteen percent (18%) per annum on all amounts of principal remaining unpaid, until the principal and interest shall have been fully paid.

This note is secured by 35,000 Shares of Excalibur Energy Corporation common stock.

The Makers, Endorsers, and Guarantors hereby severally waive presentment for payment, notice of non-payment, protest and notice of protest, and agree that extensions of the time for payment may be granted by the Holder hereof without notice.

Should this note be referred by the Holder to an attorney for collection due to the default by Makers, Makers agree to pay all costs of collection, including a reasonable attorney's fee, in addition to the principal and interest hereof.

MAKERS:

PACER PHENIX CORPORATION,
a corporation,

BY: _____
PRESIDENT

_____
JERRY L. MIZE

_____
CAROLE N. MIZE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 83-C-30-C
	)	
PAUL M. MITTS,	)	
	)	
Defendant.	)	

DEFAULT JUDGMENT

This matter comes on for consideration this 2nd day of June, 1983, the Plaintiff appearing by Frank Keating, United States Attorney for the Northern District of Oklahoma, through Nancy A. Nesbitt, Assistant United States Attorney, and the Defendant, Paul M. Mitts, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Paul M. Mitts, was personally served with Summons and Complaint on April 12, 1983. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE, CRDERED, ADJUDGED AND DECREED that the Plaintiff have and recover Judgment against Defendant, Paul M. Mitts, for the principal sum of $501.60, plus interest at the legal rate from the date of this Judgment until paid, and costs of the action.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 1 1983

WARREN L. McCONNICO, CLERK
U. S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA

IN RE:

CONTINENTAL FORMS, INC.,

Debtor,

ROYCE H. SAVAGE, Trustee,

Plaintiff,

vs.

COMPUDATA, INC.,

Defendant.

M-1064

Case No. 82-00892

M-1064 ✓

Adversary Proceeding No. 82-0388

FILED

JUN 1 1983 CO

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

Based upon order entered this date,

IT IS ORDERED AND ADJUDGED that the Plaintiff, Royce H. Savage, Trustee, recover of the Defendant, Compudata, Inc., the sum of $1,658.38, with interest thereon at the rate of 8.72% per annum from September 9, 1982, together with an attorney's fee in the amount of $500.00.

ENTERED May 31, 1983.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 83-C-405-C
GARY L. McAFEE, Defendant.	)	

NOTICE OF DISMISSAL

COMES NOW the United States of America by Frank Keating, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 1st day of June, 1983.

UNITED STATES OF AMERICA

FRANK KEATING
United States Attorney

PETER BERNHARDT
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

RICHARD EDMOND OLIVER,

Plaintiff,

-vs-

EQUIFAX, INC., a foreign corporation,

Defendant.

NO. 82-C-950-C

ORDER OF DISMISSAL

On this 1st day of June, 1983, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

(Signed) H. Dale Cook

JUDGE OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT

APPROVED AS TO FORM:

/S/
JAMES E. FRASIER
Attorney for Plaintiff

/s/
RAY H. WILBURN
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROYCE H. SAVAGE, Trustee in Bankruptcy for Home-Stake Production Company, Plaintiff,	)	
vs.	)	No. 75-C-435 -BT
NORMAN CROSS, JR., and CROSS & COMPANY, a partnership, Defendants.	)	

STIPULATION AND ORDER OF DISMISSAL

The plaintiff, Royce H. Savage, Trustee, and the defendants Norman Cross, Jr. and Cross & Company stipulate and agree to dismiss this action with prejudice, pursuant to Rule 41 - Federal Rules of Civil Procedure.

Royce H. Savage, Trustee
in Bankruptcy for Home-
Stake Production Company

Gene L. Mortensen
Rosenstein, Fist & Ringold
525 South Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211
Attorney for Plaintiff

Norman Cross, Jr.

Cross & Company

By Norman Cross, Jr., a partner

B. Hayden Crawford

B. Hayden Crawford
1714 First National Bank Building
Tulsa, Oklahoma 74103
Attorney for Defendants

According to the stipulation of the parties IT IS ORDERED that the captioned action is dismissed with prejudice.

/s/ Thomas R. Brett

Thomas Brett, Judge
United States District Court